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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY and WESTLANDS WATER DISTRICT,

Plaintiffs,

v.

SALLY JEWELL, as Secretary of the U.S. Department of the Interior; U.S. DEPARTMENT OF THE INTERIOR; U.S. BUREAU OF RECLAMATION; MICHAEL L. CONNOR, as Commissioner, Bureau of Reclamation, U.S. Department of the Interior; and DAVID MURRILLO, as Regional Director, Mid-Pacific Region, Bureau of Reclamation, U.S. Department of the Interior,

Defendants.

CASE NO.

COMPLAINT FOR VIOLATIONS OF RECLAMATION LAW AND NEPA, AND FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs San Luis & Delta-Mendota Water Authority ("Authority") and Westlands Water District ("Westlands") allege as follows:

I.

INTRODUCTION

1. The farms and cities that depend upon water supply from the Central Valley Project ("CVP") are suffering a severe water shortage. This year CVP agricultural water service contractors located south of the Sacramento-San Joaquin Rivers Delta have been allocated only 20% of their contract supply; the initial allocation in February was 25% but this was cut by 5% on March 22 due to unusually dry conditions. Orchards and vineyards are suffering severe stress, and row crops have been abandoned and other fields have been left fallow. Already overtaxed groundwater aquifers are being further drained, and in desperation farmers are using poor quality groundwater that damages soil and plants. Going in to 2014, Reclamation has projected that storage in CVP reservoirs, including in Trinity Reservoir, will be far below average. Barring an extraordinarily wet winter, south-of-Delta agricultural water service contractors expect to receive a very low initial allocation of CVP water in February 2014, perhaps even a zero percent allocation. Farm workers, farm-related businesses and whole farm communities on the western side of the San Joaquin Valley face a growing water shortage catastrophe. This water shortage is causing physical, social, and economic damage on a landscape scale.

2. Given this calamity, it is unthinkable that the Defendants would unlawfully release water from CVP storage to the ocean instead of delivering that supply to water users who desperately need it. But Defendants intend to do exactly that. On August 7, 2013, Defendants announced that beginning on August 13 they will release up to 109,000 acre-feet of water from the already low storage in the CVP's Trinity Reservoir to the Trinity River. That water, so needed by farms and communities in the western San Joaquin Valley, will be irretrievably lost.

3. Defendants' purpose in making these illegal releases of stored CVP water is to reduce the risk of a possible salmon die-off from disease in the lower Klamath River, downstream of the confluence of the Klamath River and Trinity River. Such a die-off in the lower Klamath River has been documented only one previous year, in 2002. Indeed, years with numbers of

returning Chinook salmon and flows in the lower Klamath River similar to the conditions expected this year have not resulted in salmon die-offs. Defendants are thus choosing to make a massive release of stored water from the Trinity Reservoir based on the unproven premise that doing so will reduce the risk of a repeat of the unique 2002 event. For this speculative precautionary benefit, Defendants intend to trade the certainty of losing desperately needed water supply in 2013 and deepening the harm to CVP water users and the environment from water shortage.

4. This misguided choice is not Defendants' to make; Defendants have no authority to make the planned releases. Instead, the releases would contradict and violate the Defendants' mandatory statutory duties.

5. First, the planned releases would violate section 3406(b)(23) of the Central Valley Project Improvement Act ("CVPIA"), Title XXXIV, Pub. L. No. 102-575, 106 Stat. 4700 (1992). Under CVPIA section 3406(b)(23), the Secretary of the Interior has a mandatory duty to implement the flow requirements and criteria specified in a December 19, 2000 Decision for Trinity River Mainstem Fishery Restoration ("ROD"). Under the ROD, in 2013 Defendants may release up to but not exceeding 453,000 acre-feet of water from the Trinity River Division ("TRD") for the purposes of fishery restoration, propagation and maintenance. If Defendants make the planned August and September fishery releases, they will far exceed the 453,000 acre-feet volume limit for fishery releases set by the ROD. Hence, the planned releases would violate the Secretary's mandatory duty under CVPIA section 3406(b)(23) to implement fishery releases in accordance with the ROD.

6. Second, the planned releases of water stored by the TRD would violate section 3411(a) of the CVPIA, and section 8 of the Reclamation Act, codified at 43 U.S.C. section 383. The lower Klamath River is not an approved place of use under the State water rights permits applicable to the water stored by the TRD. CVPIA section 3411(a) directs that "the Secretary shall, prior to the reallocation of water from any . . . place of use specified within applicable Central Valley Project water rights and licenses to a . . . place of use not specified within said permits or licenses, obtain a modification in those permits and licenses, in a manner consistent

with the provisions of applicable State law, to allow such change in . . . place of use." In addition, section 8 of the Reclamation Act requires Defendants "to proceed in conformity with" State law "relating to the control, appropriation, use or distribution of water used in irrigation." 43 U.S.C. § 483. The planned releases are intended to improve conditions for salmon in the lower Klamath River. Defendants have failed, however to obtain a modification of the authorized place of use in the State permits applicable to the TRD in accordance with State law. The releases therefore would violate the Secretary's mandatory duties under CVPIA section 3411(a) and 43 U.S.C. section 483 to obtain a modification of the State permits before reallocating TRD water for use in the lower Klamath River.

7. Third, the planned releases are a major federal action that will have significant effects on the human environment. Yet, Reclamation has failed to identify and analyze those effects, or consider alternatives, in an environmental impact statement as required by the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.* In letters to Reclamation dated May 31, 2013 and July 31, 2013, Plaintiffs explained that the planned releases would be unlawful, including for Defendants' failure to prepare an environmental impact statement under NEPA. The unnaturally high, cold flows to be released from Trinity Reservoir in August and September will adversely affect biological resources in the mainstem of the Trinity River, including western pond turtles, yellow-legged frog, and lamprey, and will result in the destruction of salmon redds in the Trinity River when the unusually high flows recede in late September. The loss of stored water threatens adverse effects on the listed coho salmon in the Trinity River, and Sacramento River winter-run Chinook salmon and Central Valley spring-run Chinook salmon, by reducing the pool of cold water available to maintain cooler temperatures in the upper Trinity River and the upper Sacramento River. The loss of CVP water supply and loss of hydropower generation from the releases will result in adverse effects to the environment throughout much of the CVP service area. It will cause physical impacts to the environment in the Central Valley, including fallowing and related dust emissions, groundwater overdraft and related subsidence, and use of alternative energy sources to compensate for lost hydropower. While Defendants have attempted to minimize or dismiss such effects in their environmental assessment, at a minimum the available

information raises substantial questions whether the releases may have a significant effect on the environment. Under NEPA, Defendants therefore must analyze and disclose the effects of the planned releases in an environmental impact statement, and provide an opportunity for public review and comment on that analysis, before making the releases. Defendants' reliance instead on an environmental assessment and a finding of no significant impact is arbitrary and capricious and violates NEPA.

8. In August and September 2012, Defendants made releases from the TRD of nearly 40,000 acre-feet for the same purpose. Plaintiffs have been and are still being harmed by the 2012 releases, because they created a nearly 40,000 acre-feet hole in TRD storage. Reclamation has not kept its promise to mitigate the loss of water supply from the 2012 releases, nor has it kept its promise to develop a long-term strategy for addressing fish needs in the lower Klamath River. The August and September 2012 releases are unlawful for the same reasons the planned 2013 releases are unlawful: they are in violation of CVPIA section 3406(b)(23) because they are in excess of the volume of fishery releases for 2012 set by the ROD; the 2012 releases violate section 3411(a) of the CVPIA and 43 U.S.C. § 383 because the lower Klamath River is not an approved place of use under the State water rights permits for the TRD; and Defendants have violated NEPA by failing to prepare an environmental impact statement for the 2012 releases. In addition to relief regarding the planned 2013 releases, Plaintiffs request that the Court set aside as unlawful Defendants' decision to make the 2012 releases, and enter other appropriate relief.

9. Finally, Defendants' proposed action is contrary to section 7 of the federal Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531 *et seq*. Federal action agencies must consult under section 7 regarding any action that "may affect" a listed species or its critical habitat. 50 C.F.R. § 402.14(a). The proposed releases will affect species listed under the ESA, including coho salmon in the Trinity River, and Sacramento River winter-run Chinook salmon and Central Valley spring-run Chinook salmon in the Sacramento River and its tributaries. Reclamation, as the action agency, has a duty under ESA section 7 of the federal Endangered Species Act, 16 U.S.C. § 1536, to consult with the National Marine Fisheries Service regarding

these effects on listed anadromous fish, and with the United States Fish and Wildlife Service regarding effects on other listed species that may be affected. Reclamation has failed to complete formal consultation with these agencies regarding the effects of the proposed releases as required by ESA section 7. Furthermore, absent a completed biological opinion, Defendants will have no authorization for any incidental take of listed species that results from the releases. Such take would violate ESA section 9, 16 U.S.C. section 1538. On July 11, 2013, Plaintiffs provided notice of these violations as required by ESA section 11(g), and will amend or supplement this complaint to add ESA claims if Defendants do not cure their violations within sixty days of such notice.

10. Releasing the water to the Trinity River instead of delivering it to CVP water service contractors south of the Delta will cause Plaintiffs irreparable harm from loss of precious CVP water supply in a time of severe water shortage, and related and other irreparable harm to the environment, including biological resources in both the Trinity River basin and the Sacramento River basin, and to highly productive farmland in the San Joaquin Valley and surrounding communities. If the water is released to the Trinity River, the likely irreparable harm from lower carry over storage in the TRD will extend into 2014, by reducing the amount of the initial 2014 allocation, delaying increases in 2014 contract allocations, and increasing the difficulty of managing the cold water pool for listed salmon.

11. The proposed releases are scheduled to begin on August 13 and conclude by no later than September 30, and hence, will be completed before Plaintiffs can reasonably obtain a final ruling on the merits. Plaintiffs therefore seek temporary and preliminary injunctive relief to prevent the August and September 2013 supplemental releases. In addition, Plaintiffs seek judgment setting aside Defendants' decisions to make the August and September 2012 supplemental releases, and the planned 2013 releases, as unlawful, arbitrary and capricious, an abuse of discretion and in excess of Defendants' authority, and a permanent injunction against such unlawful releases in the future, as well as other relief.

II.

JURISDICTION AND VENUE

12. This action states claims against departments and officers of the United States arising under the 1902 Reclamation Act, 32 Stat. 388, and acts amendatory thereof and supplementary thereto including the CVPIA, and a claim arising under NEPA. In addition, the claims involve Plaintiffs' interests in CVP water established under contracts entered by the United States pursuant to reclamation law, and operations of the CVP. This Court has jurisdiction of this action pursuant to 28 U.S.C. section 1346(a)(2) and 28 U.S.C. section 1331. This Court is authorized to issue injunctive and declaratory relief pursuant to pursuant to Rule 65 of the Federal Rules of Civil Procedure, 28 U.S.C. section 2201, and 5 U.S.C. sections 703 and 706.

13. The sovereign immunity of the United States, and that of its federal agencies and federal officers and employees, is waived for this action by the judicial review provisions of the Administrative Procedures Act, 5 U.S.C. section 701 *et seq.*, including sections 702 and 704.

14. The Authority's principal place of business is located within Merced County. Westlands' principal place of business is located within Fresno County. The claims alleged in this action involve CVP water that is or should be available for use on lands and in communities situated within the counties of Stanislaus, Merced, Fresno, and Kings in the state of California, which lands and communities are within the boundaries of the United States District Court for the Eastern District of California. Further, acts or omissions giving rise to the claims occurred within the boundaries of the United States District Court, Eastern District of California, and will substantially impact land and communities situated within the counties of Stanislaus, Merced, Fresno and Kings. Therefore, venue in this judicial district is proper pursuant to 28 U.S.C. section 1402 and 28 U.S.C. section 1391(b)(2), and Rule 120 of the Local Rules of the United States District Court, Eastern District of California.

III.

PARTIES

15. Plaintiff Authority is a joint powers authority formed pursuant to California Government Code section 6500 *et seq*. The Authority consists of 29 member public agencies, 27

of which contract with the United States Bureau of Reclamation for water supply from the CVP. Water delivered to the Authority's members by the CVP is used within areas of San Joaquin, Stanislaus, Merced, Fresno, Kings, San Benito, and Santa Clara Counties, California. Some of the CVP water delivered to its members is supplied via California's State Water Project ("SWP") pumps and facilities located within the Sacramento and San Joaquin Rivers Delta ("Delta"). Among the purposes for which the Authority was formed is to preserve and protect the quantity and quality of surface and groundwater supplies available for use within the boundaries of its member agencies. The Authority is authorized to commence and maintain suits on behalf of its member agencies. Pursuant to an agreement between the Authority and the United States, which became effective March 1, 1998, responsibility for the operation and maintenance of some facilities of the Delta Division of the CVP was transferred to the Authority. Based upon this agreement, the Authority operates the Jones Pumping Plant, the Delta-Mendota Canal, and other related facilities of the CVP.

16. Plaintiff Westlands is a member of the Authority. Westlands provides water to an area of approximately 600,000 acres in Fresno and Kings Counties on the western side of the San Joaquin Valley. Westlands is authorized to commence and maintain on behalf of landowners within its boundaries any action involving or affecting the ownership or use of water. Westlands holds vested contractual rights to receive water from the United States Bureau of Reclamation for distribution and use within Fresno and Kings Counties. Westlands also holds vested contractual rights to receive additional water under the Stipulated Judgment entered on December 30, 1986, in the consolidated cases of *Barcellos and Wolfsen, Inc., et al. v. Westlands Water District* and *Westlands Water District v. United States of America*, Nos. CV 79-106 OWW and CV F-89-245 OWW (E.D. Cal.) (collectively "*Barcellos*"). Most of Westlands' CVP water is supplied via CVP pumps and facilities located within the Delta, but some of Westlands' CVP water can also be supplied via SWP pumps and facilities located within the Delta.

17. Defendant Sally Jewell is the Secretary of the United States Department of the Interior ("Secretary"), and is named herein in her official capacity, for her actions and failures to act in an official capacity, or under color of legal authority. The Secretary is responsible for the

administration of the 1902 Reclamation Act and acts amendatory thereof and supplementary thereto, including the CVPIA.

18. Defendant United States Department of the Interior ("Interior") is responsible for the administration of the 1902 Reclamation Act and acts amendatory thereof and supplementary thereto, including the CVPIA. The CVP is a water project authorized, constructed, maintained and operated pursuant to these laws.

19. Defendant Bureau of Reclamation ("Reclamation") is an agency of the United States, within the Department of the Interior, and is charged with administration of the 1902 Reclamation Act, and acts amendatory thereof and supplementary thereto, including the CVPIA. Reclamation operates the CVP, including the Trinity River Division.

20. Defendant Michael Connor is the Commissioner of the United States Bureau of Reclamation ("Commissioner"), and is named herein in his official capacity, for his actions and failures to act in an official capacity, or under color of legal authority. The Commissioner is responsible for administration of the 1902 Reclamation Act and acts amendatory thereof and supplementary thereto, including the CVPIA.

21. Defendant David Murillo is the Regional Director of the United States Department of the Interior, Bureau of Reclamation, Mid-Pacific Region ("Regional Director"), and is named herein in his official capacity, for his actions and failures to act in an official capacity, or under color of legal authority. The Regional Director is responsible for the administration of the 1902 Reclamation Act and acts amendatory thereof and supplementary thereto, including the CVPIA, within the Mid-Pacific Region. The Mid-Pacific Region includes California. The Regional Director is responsible for operation of the CVP, including the Trinity River Division, and the Klamath Project on the Klamath River. The Regional Director is the Contracting Officer under contracts entered between Reclamation and CVP contractors, including members of the Authority.

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IV.

SUMMARY OF FACTS GIVING RISE TO CLAIMS

The Central Valley Project And The Trinity River Division

22. The CVP is the largest water storage and delivery system in California, covering 29 of the state's 59 counties. The CVP consists of 21 reservoirs capable of storing 12 million acre-feet of water, 11 power plants, 500 miles of major canals, aqueducts and tunnels. The CVP provides water to irrigate approximately 3.25 million acres of farmland and supplies water to more than 2 million people through more than 250 long-term water contracts in the CVP service area. Most of the CVP service area is within the Central Valley. Approximately 90% of the portion of CVP water delivered to contractors located south of the Delta is used for agricultural purposes.

23. In 1955, Congress authorized the construction, operation and maintenance of the TRD as "an addition to and integral part of" the CVP, for "the principal purpose of increasing the supply of water available for irrigation and other beneficial uses in the Central Valley of California." Act of August 12, 1955, Pub.L. No. 84-386, 69 Stat. 719.

24. The TRD stores and regulates water from the Trinity River. The Trinity River originates in northwest California, near the city of Weed, and flows generally southward until it is impounded by Trinity and Lewiston Dams. The mean annual inflow to Trinity Reservoir from the Trinity River is about 1.2 million acre-feet. Trinity Reservoir has a storage capacity of 2.4 million acre feet. Water is released from Trinity Reservoir to the Trinity River through Trinity Dam and Powerhouse, until it flows to the much smaller Lewiston Reservoir seven miles downstream. From Lewiston Reservoir, water regulated by the TRD may again be released to the Trinity River through Lewiston Dam, or diverted eastward to the Sacramento River watershed. Water released to the Trinity River from Lewiston Dam flows generally westward some 112 river miles until entering the Klamath River. The Klamath River discharges into the Pacific Ocean approximately 40 river miles downstream of its confluence with the Trinity River. Alternatively, water in Lewiston Reservoir may be diverted at Lewiston Dam to the Sacramento River

watershed through Clear Creek Tunnel, which conveys the water into Whiskeytown Reservoir. From there, the water either is transported through the Spring Creek Tunnel and discharged into Keswick Reservoir, located on the Sacramento River downstream from Shasta Reservoir, or is released from Whiskeytown Reservoir to Clear Creek, which flows into the Sacramento River downstream from the Keswick Reservoir.

25. As water is diverted into the Sacramento River watershed and conveyed to the Sacramento River, it passes through several hydroelectric plants, and thereby generates electricity. Power production as a result of cross-basin diversion of Trinity River water through TRD powerplants is approximately three times greater than power production at Shasta Dam for an equivalent amount of water released. Prior to the ROD, Trinity Reservoir typically reached its greatest storage level at the end of May. Under the pattern of Trinity releases prescribed by the ROD, maximum storage may occur by end of April, or early in May.

26. The TRD's water diversions each year from the Trinity River into the Central Valley watershed are integrated with operations of the Shasta Division of the CVP, to supply water to CVP water service contractors and others, and to generate hydropower. The water diverted to the Sacramento River watershed is also used to comply with environmental protection and restoration requirements, including water quality in the Sacramento River and Sacramento-San Joaquin Delta, and to supply water to wildlife refuges. Water that is diverted by the TRD and conveyed to the Central Valley is potentially available for delivery to the Authority's members through CVP facilities, among other uses. On the other hand, Trinity River water that is released to the Trinity River at Lewiston Dam is irretrievably lost to any further CVP uses, including delivery to the Authority's members.

27. Reclamation times exports of TRD water to the Sacramento River watershed based on a determination of how to make best use of a limited volume of Trinity water, in concert with releases from Shasta, to help conserve coldwater pools and to meet temperature objectives on the upper Sacramento and Trinity Rivers, as well as power production economics. A key consideration in the export timing determination is the thermal degradation that occurs in Whiskeytown Reservoir related to residence time of transbasin exports in the lake, and air

temperatures. To minimize such thermal degradation effects, transbasin export patterns are typically scheduled to provide an approximate 120,000-acre-foot volume in late spring to create a thermal connection to Spring Creek Powerhouse before larger transbasin volumes are scheduled during the hot summer months. Typically, to avoid warming and function most efficiently for temperature control, the water flowing from the Trinity through Whiskeytown Reservoir must be sustained at fairly high rates. When the total volume of Trinity water available for export is limited, that may in turn compress the time period for which effective temperature control releases can be made from Whiskeytown Reservoir to cool water in the Sacramento River for the benefit of listed salmonid species. In general, lowering the quantity water available for export from the TRD increases the reliance on the cold water pool in the deeper waters of Shasta Reservoir to maintain sufficiently cold temperatures in the Sacramento River for salmonids.

CVPIA Section 3406(b)(23) And Releases For The Trinity River Fishery

28. In 1992, in the CVPIA, Congress sought to bring a final resolution to a decades-old dispute over the appropriate level of releases to the Trinity River for the fishery in the Trinity River. In CVPIA section 3406(b)(23), Congress established a process to define the appropriate level of releases from the TRD to restore and maintain the Trinity River fishery. Congress directed the Secretary to develop "permanent instream fishery flow requirements and Trinity River Division operating criteria and procedures for the restoration and maintenance of the Trinity River fishery." The Secretary did so, culminating in the ROD, adopted on December 19, 2000. The ROD was based on a Trinity River Flow Evaluation Study ("Final Flow Report") completed in 1999, and a Final Environmental Impact Statement/Environmental Impact Report ("FEIS/EIR") completed in October 2000. A copy of the ROD is attached as Exhibit 1.

29. The Final Flow Report did not recommend, and the FEIS/EIR did not analyze, flow releases in the months of August and September for the purpose of reducing the risk of fish disease in the lower Klamath River.

30. In CVPIA section 3406(b)(23), Congress directed that if the Hoopa Valley Tribe concurred in the release and operating criteria and procedures developed by the Secretary, then they "shall be implemented accordingly." The Hoopa Valley Tribe concurred in the flow

requirements and related operating criteria in the ROD, and indicated that concurrence by signing the ROD on December 19, 2000. As a result of that concurrence, the Secretary has a mandatory duty under CVPIA section 3406(b)(23) to follow the release requirements and criteria for fishery flows as set forth in the ROD.

31. CVPIA section 3406(b)(23) provides in full:

> (23) in order to meet Federal trust responsibilities to protect the fishery resources of the Hoopa Valley Tribe, and to meet the fishery restoration goals of the Act of October 24, 1984, Pub. L. 98-541, provide through the Trinity River Division, for water years 1992 through 1996, an instream release of water to the Trinity River of not less than 340,000 acre-feet per year for the purposes of fishery restoration, propagation, and maintenance and,
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> (A) by September 30, 1996, the Secretary, after consultation with the Hoopa Valley Tribe, shall complete the Trinity River Flow Evaluation Study currently being conducted by the U.S. Fish and Wildlife Service under the mandate of the Secretarial Decision of January 14, 1981, in a manner which insures the development of recommendations, based on the best available scientific data, regarding permanent instream fishery flow requirements and Trinity River Division operating criteria and procedures for the restoration and maintenance of the Trinity River fishery; and
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> (B) not later than December 31, 1996, the Secretary shall forward the recommendations of the Trinity River Flow Evaluation Study, referred to in subparagraph (A) of this paragraph, to the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives. If the Secretary and the Hoopa Valley Tribe concur in these recommendations, any increase to the minimum Trinity River instream fishery releases established under this paragraph and the operating criteria and procedures referred to in subparagraph (A) shall be implemented accordingly. If the Hoopa Valley Tribe and the Secretary do not concur, the minimum Trinity River instream fishery releases established under this paragraph shall remain in effect unless increased by an Act of Congress, appropriate judicial decree, or agreement between the Secretary and the Hoopa Valley Tribe. Costs associated with implementation of this paragraph shall be reimbursable as operation and maintenance expenditures pursuant to existing law.

CVPIA § 3406(b)(23) (Pub. Law No. 102-575, 106 Stat. 4600, 4720-4721) (emphasis added).

32. The instream flow release schedule for the Trinity River in the ROD dramatically increased the amount of CVP water annually dedicated to instream fishery flows as compared to prior years under TRD operations. The volume of releases ranges from 368,000

acre-feet in a critically dry year to 815,000 acre-feet in an extremely wet year. (ROD at p. 12.) The ROD specifies a schedule of annual instream flow release volumes and peak flow rates for five different water-year classifications, set forth in Table 1 of the ROD, as follows:

Water-year Class	Volume (Acre-feet)	Peak Flow (cfs)	Peak Flow Duration (days)
Critically dry	369,000	1,500	36
Dry	453,000	4,500	5
Normal	647,000	6,000	5
Wet	701,000	8,500	5
Extremely wet	815,000	11,000	5

The ROD provides that "the schedule for releasing water on a daily basis, according to that year's hydrology, may be adjusted but the annual flow volumes established in Table 1 may not be changed." *Id.*

33. The ROD explains that the flow regime adopted in the ROD meets the Secretary's statutory obligations, and meets federal trust responsibilities to both the Hoopa Valley Tribe and the Yurok Indian Tribe. The ROD provides: "The necessity for these actions results from the various statutory obligations of the Department as well as the federal trust responsibility to the Hoopa Valley and Yurok Indian Tribes. For the reasons expressed in this ROD, the Department's agencies are directed to implement the Preferred Alternative as described in the FEIS/EIR and as provided below. This alternative best meets the statutory and trust obligations of the Department to restore and maintain the Trinity River's anadromous fishery resources, based on the best available scientific information, while also continuing to provide water supplies for beneficial uses and power generation as a function of Reclamation's Central Valley Project (CVP)." (ROD at p. 2.)

34. The ROD further explains: "As expressed above, the guiding principles for this decision emanate from various Congressional mandates as well as the federal government's trust responsibility to the Hoopa Valley and Yurok Indian Tribes. . . . In light of these obligations, the Service, with vital support from the Hoopa Valley Tribe, conducted an extensive scientific effort

to determine the appropriate flows and other measures necessary to restore and maintain the Trinity River's anadromous fishery. In section 3406(b)(23) of the CVPIA, Congress sought the final resolution of these issues in order to meet the federal trust responsibility and to meet the goals of prior legislation, calling for the completion of the scientific efforts initiated by Secretary Andrus and for the implementation of recommendations, based on the best available scientific information, regarding permanent instream fishery flow requirements and TRD operating criteria and procedures necessary for the restoration and maintenance of the Trinity River anadromous fishery. These statutory and trust responsibilities form the basis for the FEIS/EIR's purpose and need for this action—to restore and maintain the natural production of anadromous fish below the TRD." (ROD at p. 17.)

35. The ROD explained why the Secretary did not chose a flow regime requiring even greater releases of water to the Trinity River: "Although the Maximum Flow Alternative scored better than the Preferred Alternative in terms of estimated population increases, the Maximum Flow Alternative would exclude or excessively limit the Department's ability to address the other recognized purposes of the TRD, including water diversions to the CVP and power production in the Trinity Basin. The best available science presently indicates that the Department's statutory and trust obligations can be achieved while still meeting Congressional intent to have the TRD integrated with the CVP to the extent that diversions to the CVP do not impair in-basin needs." (ROD at p. 25.)

36. Plaintiffs and others filed an action in this Court to challenge the ROD and its requirements. That litigation resulted in decisions by this Court *Westlands Water Dist. v. U.S. Dept. of Interior*, 275 F. Supp. 2d 1157 (E.D. Cal. 2002); *Westlands Water Dist. v. U.S. Dept. of Interior*, 2001 WL 34094077 (E.D. Cal.2001), including a grant of preliminary injunctive relief, and by the Ninth Circuit Court of Appeals *Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853 (9th Cir. 2004). Since resolution of that litigation in 2004, Reclamation's releases to the Trinity River for fishery purposes have been governed by the provisions of the ROD.

Reclamation's Fishery Releases For 2013 Pursuant To The ROD

37. Under the ROD, the annual volume of releases for fishery purposes depends

upon the water-year type. Defendants have declared 2013 to be a "dry" year under the ROD. Accordingly, the volume of releases for fishery purposes for 2013 set by the ROD is 453,000 acre-feet.

38. In early April 2013, Defendants established a schedule for releases of water from Trinity Reservoir for fishery purposes in 2013. As has been typical under the ROD, and as recommended by the Final Flow Report, the releases are intended to somewhat resemble a natural hydrograph, with higher releases in the spring months, with releases declining steadily through the early summer, until reaching a stable rate of 450 cubic feet per second ("cfs") through late summer and fall. A graphical representation and table showing the release schedule adopted for 2013 is attached as Exhibit 2.

39. Under the release schedule Defendants adopted for 2013, releases to the Trinity River for fishery purposes were increased beginning on April 21, and peaked at a rate of approximately 4,500 cfs on May 2 and 3. Releases declined thereafter until reaching a rate of 450 cfs on June 24. Under the adopted schedule in Exhibit 2, releases are to remain at 450 cfs until October 15, when releases will decrease further to 300 cfs.

40. The release schedule for 2013 adopted by Defendants and implemented beginning on April 21 uses the entire volume of 453,000 acre-feet for fishery purposes specified for a "dry" year by the ROD. The release schedule for 2013 does not make any provision for the supplemental releases in August and September now being proposed.

41. The release schedule for 2013 specifies a rate of releases of 450 cfs throughout August and September 2013. At a rate of releases of 450 cfs in August and September, the volume of water released from Trinity Reservoir during August and September 2013 will exceed the inflow into Trinity Reservoir during August and September. The TRD will be releasing stored water that will augment natural flows in the Trinity River below the TRD during August and September 2013. Hence, with releases at 450 cfs, the TRD will cause average flows in the lower Klamath River during the months of August and September 2013 to be higher than such flows would be absent the TRD.

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2013 Is A Year Of Critical Water Supply Shortage In The Central Valley, And 2014 Threatens To Be Even Worse

42. CVP water supplies are scarce from record dry conditions in Northern California since January. On February 25, 2013, Reclamation announced that agricultural water service contractors located south of the Delta would receive an allocation of 25% of their contract supply. On March 22, 2013, however, Reclamation reduced this allocation to 20%. Allocations for municipal and industrial water service contractors south of the Delta were reduced from 75% to 70%. Reclamation's announcement of these reductions stated "this decreased allocation for South-of-Delta contractors is based on the critical water year classification, the projection of reduced Delta inflows this spring, significant loss of reservoir storage to support pumping this summer and water quality permit requirements."

43. Shortages of overall CVP water supply are not evenly distributed across CVP water users. Due to CVP contract priorities and other CVP obligations and regulations, the members of the Authority that are agricultural water service contractors may suffer severe shortages in a year when other CVP contractors face little or no shortages. For example, this year agricultural water service contractors located south of the Delta have been allocated 20% of contract supply, while San Joaquin River Exchange and Settlement Contractors and wildlife refuges (level 2) located south of the Delta have been allocated 100% of contract and level 2 supplies respectively. North-of-Delta settlement and municipal and industrial users are likewise allocated 100% of contract supply this year, and north-of-Delta agricultural water service contractors have been allocated 75% of contract supply.

44. The dry conditions and severe water shortage in the Central Valley have been recognized by state and federal officials. On May 20, 2013, Governor Brown issued Executive Order B-21-13, to streamline approvals for water transfers to California's farms. As reasons for taking this action, the Order recites that "much of California experienced record dry conditions in January through March 2013, registering historic lows on the Northern Sierra and the San Joaquin precipitation indices" and "record dry and warm conditions resulted in a snowpack substantially below average, with estimated May water content in the statewide snowpack being only 17

percent of average and with the spring snowmelt season now being well underway." It states that "reductions in surface water deliveries will likely force San Joaquin Valley agricultural water users to extract additional groundwater from already overused basins, potentially resulting in additional land subsidence," that "the supply reductions will jeopardize agricultural production in parts of the San Joaquin Valley" and "the supply reductions will also impact millions of municipal and industrial water users across California."

45. On May 24, 2013, Reclamation and the California Department of Water Resources ("DWR") jointly asked that the CVP and SWP be relieved from meeting certain Bay-Delta Water Quality Control Plan requirements that would require Reclamation to draw down storage in Shasta Reservoir so far that it would deplete the cold water in Shasta Reservoir necessary to maintain temperatures for winter-run Chinook salmon in the Sacramento River in the late summer. A copy of the letter making that request is attached as Exhibit 3.

46. The May 24 letter explains the adverse impact of these conditions on project storage and the cold water pools in storage that are necessary to maintain cool water temperatures for salmon below Shasta Dam and other dams in the late summer and fall. Reclamation sought to operate to Critical Dry rather than Dry year type requirements in the Delta, to save 100,000 to 200,00 acre-feet of storage: "There is a significant difference between the volume of Delta inflow needed to achieve the Dry and Critical water quality objectives for Jersey Point and Emmation through June 15. If Reclamation and DWR are able to begin operating to the Critical year water quality objectives in May it may be possible to achieve 100,000 to 200,000 af, of cold water benefits in the upstream reservoirs. This savings in cold water storage would improve the chances of meeting the temperature objective at Airport Road. This cold water benefit will help avoid temperature related fish losses in the Sacramento River." (Ex. 3 at 4.)

47. On May 29, 2013, in response to this request to save 100,000 to 200,000 acre-feet of CVP and SWP water in storage, the State Water Resources Control Board, through the Delta Watermaster, indicated that it would not object or take any action if Reclamation and DWR operated to meet Critically Dry year rather than Dry year objectives under the Water Quality Control Plan, provided they submitted and operated to an approved temperature management plan

to maximize benefits to fisheries resources. In response, Reclamation submitted its plan for managing the cold water pool in Shasta Reservoir in 2013 to the State Water Board.

48. The dry conditions and water supply shortages in 2013 portend further water shortages for CVP contractors in 2014. The CVP and other water projects depend upon water stored in wetter years to compensate for lower precipitation during dry years. Water in storage allows projects to provide water users a more stable and reliable supply, and to meet the requirements of environmental regulations each year. The quantity of water in storage is a key determinant of CVP contract allocations. The greater the storage that can be carried over from one year to the next, the greater the water supply protection against dry conditions the next year. Conversely, the lower the carry over storage from one year to the next, the greater the risk to water supply availability in the following year.

49. Going in to 2014, CVP reservoirs will be depleted. Even with the relief provided by the State Water Resources Control Board, Reclamation has projected that end of December storage in Shasta Reservoir will be 1.9 million acre-feet, well below average end of December storage in Shasta Reservoir of 2.9 million acre-feet. End of December storage in Trinity Reservoir, without the proposed additional August and September 2013 releases, is projected to be about 1.3 million acre-feet, compared to an average of 1.6 million acre-feet. At a level of projected end of December carryover storage in Trinity Reservoir of 1.3 million acre-feet, it is highly unlikely that there will be enough precipitation to re-fill Trinity Reservoir in 2014. Only an extraordinarily wet season in late 2013 and early 2014 will allow these reservoirs to refill to capacity.

Despite The Existing CVP Water Shortage, And The Terms Of The ROD, Defendants Have Decided To Make Additional Releases Of Water Stored In The TRD During August And September 2013 For Fishery Purposes

50. Some four months after cutting contract allocations to south-of-Delta water service contractors, and some two months after seeking relief from water quality standards to preserve CVP water in storage, Defendants have announced their decision to release up to 109,000 acre-feet of water from storage in the TRD to the ocean. On August 7, 2013, Defendants announced they have decided to make this release of stored water from the TRD in August and

September 2013, for the purpose of reducing the risk of a possible salmon die-off from disease in the lower Klamath River. Such a die-off in the lower Klamath River has occurred once before, in 2002. However, a die-off did not occur in other years with numbers of returning salmon and flows in the lower Klamath River similar to what is projected for this year.

51. Beginning on August 13, Defendants intend to increase releases from the TRD to the Trinity River from the previously scheduled 450 cfs to achieve flow in the lower Klamath River of 2,800 cfs. Defendants intend to continue excess releases until at least September 21. The excess releases will continue until September 30 if water temperatures in the lower Klamath River are above 23°C. These excess releases above the rate 450 cfs for this period through September 30 will amount to approximately 70,000 acre-feet of water.

52. Defendants intend to further increase the rate of releases to double the flow in the lower Klamath River to 5,600 cfs if they detect an outbreak of disease in the lower Klamath River. These releases would continue for a 7-day period. If made, these additional releases will amount to approximately 39,000 acre-feet of water.

53. The water released under this action will flow in the Klamath River and into the Pacific Ocean. That water will be irretrievably lost for export to the Sacramento watershed and other CVP uses, including water supply and generation of hydropower.

The Proposed Additional Releases Will Cause Significant And Irreparable Harm

54. Plaintiffs will be irreparably harmed by the lost water supply from the proposed releases, up to approximately 109,000 acre-feet. Instead of releasing that water to the Trinity River, Defendants could export it to the Sacramento watershed to support deliveries to members of the Authority, including Westlands. By doing so, Reclamation could restore the 5% allocation to south-of-Delta contractors that was cut on March 22, 2013. In addition, increasing exports from the TRD to the Sacramento River watershed would increase hydropower generation in 2013.

55. Reclamation has a contractual obligation to optimize water deliveries to CVP contractors. Given that Reclamation has concluded that it may release up to an additional 109,000 acre-feet of water from the TRD this year and still meet the various legal mandates applicable to the CVP, then pursuant to its contractual obligation to optimize deliveries it should

use that water to restore the contract allocations to south-of-Delta CVP contractors that were cut on March 22. By contrast, Reclamation is under no legal mandate to release additional water to the Trinity River. Quite the contrary, as alleged herein, such releases are illegal.

56. If Defendants make the proposed releases to Trinity River instead of restoring the allocation to south-of-Delta CVP agricultural water service contractors to 25%, Plaintiffs will be irreparably harmed in at least two ways. First, their constituents will suffer the immediate loss of the increased contract allocation and use of increased CVP water deliveries south of the Delta in 2013. Additional CVP supply is desperately needed south of the Delta. The existing 20% allocation has put the entire agricultural region on the west side of the San Joaquin Valley in distress. Growers are scrambling to stretch the limited CVP supply to keep alive permanent crops such as orchards and vineyards, and to supplement irrigation with lower quality groundwater that damages trees, crops and the soil, and further depletes an already overdrafted groundwater basin. Growers also face financial injury, as they must pay high rates to purchase water from other sources, and lose income from fallowed fields and abandoned crops. That has rippling socioeconomic effects in the region, from lost jobs and dislocation of communities. An additional 5% allocation will help alleviate existing shortages, and for any portions not used in 2013, provide secure supply for 2014 stored in San Luis Reservoir south of the Delta, water that growers can more readily rely upon than storage in upstream reservoirs.

57. Second, by further draining Trinity Reservoir in August and September this year without meeting existing water supply needs, Defendants will likely set up even more dire circumstances in 2014. It is very unlikely that Trinity Reservoir will refill in 2014. Hence, the additional August and September releases will likely create a hole in storage in Trinity Reservoir of up to 109,000 acre-feet going in 2014. This hole in storage in Trinity Reservoir will likely reduce initial, February 2014 CVP contract allocations to members of the Authority below what the allocations would have been without the releases. Lower initial allocations and delays in increases to allocations cause harm to farmers trying to plan their planting for the coming growing season and secure financing. With reduced CVP water allocations, they must scale back their operations by fallowing land, reducing the number of employees, and taking other measures.

While increasing the allocation in 2013 will likewise likely result in reduced water in storage next year, that will be offset by the benefits of meeting water supply needs this year and likely some carry over of water allocated in 2013 to 2014.

58. The loss of CVP water supply has cascading, adverse environmental and socioeconomic effects within the CVP service area south of the Delta. The west side of the San Joaquin Valley cannot easily absorb losses of CVP water supply. Reclamation's ongoing inability and failure to consistently deliver the full contractual amount of CVP water to the Authority's members, such as Westlands, has resulted in extensive conservation efforts within Westlands and other districts. As a result, the potential gains from conservation in these areas have been exhausted. Farmers must instead turn to increased pumping of groundwater, purchase of supplemental water supplies from other sources, and ultimately to fallowing land.

59. Very low CVP allocations in successive years push farmers beyond the level to which they can adapt even for the short term. Water supply shortages worsened by the proposed additional releases threaten numerous adverse environmental effects within the CVP service area including, but not limited to, worsening of groundwater basin overdraft, land subsidence, decreased groundwater recharge, threatened violation of state-adopted basin plan water quality objectives, reductions in crop yields, reduced agricultural employment, endangerment of permanent crops, and decreased air quality.

60. In addition, the proposed releases from Trinity Reservoir will increase the risk that the TRD will not be able to maintain cold temperatures for salmon in the Trinity River in 2014. The releases will also diminish the ability of the TRD to assist in maintaining cold temperatures for salmon in the Sacramento River. By diminishing the total volume of Trinity water available for export to the Sacramento River, the releases will likely compress the time period for which effective temperature control releases can be made from Whiskeytown Reservoir to the Sacramento River. That in turn will force greater reliance on the cold water pool in Shasta Reservoir to maintain cool temperatures for endangered winter-run Chinook salmon in the Sacramento River through the late summer. The salmon species affected, coho salmon in the Trinity River and Central Valley spring-run and winter-run Chinook salmon in the Sacramento

River, are listed under the ESA as threatened or endangered.

61. In addition, if Defendants make the proposed releases to the Trinity River in 2013, the releases will harm other biological resources within the Trinity River mainstem. The releases will cause unseasonably high and cold flows in the mainstem of the Trinity River. Such flows will harm special status species that inhabit the Trinity River, including the yellow-legged frog, the western pond turtle, and the lamprey.

Defendants Have Not Prepared An Environmental Impact Statement

62. Defendants have not prepared an environmental impact statement to analyze the effects of the proposed additional August and September 2013 releases to the Trinity River under NEPA.

63. On July 17, 2013, Defendants released a draft environmental assessment and finding of no significant impact ("draft EA/FONSI") regarding the proposed additional releases. Defendants requested comment by July 31, 2013. On July 31, 2013, Plaintiffs submitted comments on the draft EA/FONSI. The comments explained that the proposed releases to the Trinity River are a major federal action significantly affecting the quality of the human environment, and that under NEPA Defendants must prepare an environmental impact statement. These comments explained that the loss of stored TRD water to CVP uses will have particularly harmful effects given the existing water shortage and the shortage looming for 2014.

64. Notwithstanding these comments and similar comments by others, on August 7, 2013, Defendants adopted a final EA/FONSI. The final EA/FONSI fails to adequately address significant potential impacts of the proposed releases.

The Court Should Preliminarily Enjoin The Proposed Releases, And After Resolving The Merits Enter Judgment Setting Aside The Defendants' Actions And Providing Declaratory And Permanent Injunctive Relief

65. The additional August and September releases will begin and be completed before the Court can finally resolve the merits of Plaintiffs' claims, and if allowed to occur, the releases will likely cause irreparable harm to Plaintiffs and the environment. The balance of hardships favors injunctive relief, and is in the public interest. Plaintiffs therefore request temporary and preliminary injunctive relief against the releases.

66. Although the period of the proposed 2013 releases will end before the Court can finally resolve the claims alleged herein, and the 2012 releases have already been completed, Plaintiffs request that the Court nonetheless finally resolve these claims and enter judgment for Plaintiffs. The Defendants have already made supplemental releases for the purpose of reducing risk of disease for returning salmon in the lower Klamath River in the years 2003, 2004, and 2012, and are attempting to do so again in 2013. Defendants are likely to attempt to do so yet again in future years when they believe conditions warrant. The period of such supplemental releases is about 40 days, too short a time to allow Plaintiffs' claims against them to be fully litigated prior to the cessation of the releases. The Court should therefore maintain jurisdiction even after the period of the releases proposed for 2013 has expired, to resolve the claims presented in this complaint, to set aside the 2012 and 2013 actions, and enter appropriate declaratory and permanent injunctive relief, relief that will govern and prevent similar attempted actions in future years.

V.

FIRST CLAIM FOR RELIEF
(THE 2013 RELEASES VIOLATE CVPIA SECTION 3406(B)(23))

67. Plaintiffs reallege and incorporate herein by reference the allegations of paragraphs 1 to 66.

68. The Defendants have a mandatory duty under CVPIA section 3406(b)(23) to implement releases to the Trinity River for fishery purposes in accordance with the ROD. The maximum fishery releases for each year is set forth in the ROD, based on year type. As the ROD states at page 12: "the schedule for releasing water on a daily basis, according to that year's hydrology, may be adjusted but the annual flow volumes established in Table 1 may not be changed."

69. The additional August and September releases are for fishery purposes. Specifically they are intended to benefit migrating Chinook salmon in the lower Klamath River. A significant portion of the Chinook salmon in the lower Klamath River are returning to the Trinity River for spawning.

70. Under the ROD, Defendants are limited to releases for fishery purposes totaling

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of 453,000 acre-feet for 2013. If Defendants make the additional August and September releases, the total releases for fishery purposes in 2013 will exceed the 453,000 volume limit set by the ROD, by the full amount of the additional releases. Defendants' action is therefore in violation of Defendants' mandatory duty under CVPIA section 3406(b)(23) to implement the releases and operating criteria set forth in the ROD.

71. Defendants' decision to make the additional August and September fishery releases is a final agency action for which there is no other adequate remedy in a court, within the meaning of APA section 704.

72. The Defendants' action is: (1) arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law; (2) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right; and (3) without observance of procedure required by law, within the meaning of 5 U.S.C. § 706(A), (C) and (D). Under APA section 706, the Court must therefore hold unlawful and set aside Defendants' action.

73. Plaintiffs have exhausted any and all administrative remedies required by law. Plaintiffs have no plain, speedy or adequate remedy at law.

WHEREFORE, Plaintiffs pray for relief as more fully set forth below.

VI.

SECOND CLAIM FOR RELIEF
(THE 2013 RELEASES ARE A USE OF WATER OUTSIDE THE STATE PERMITTED PLACE OF USE IN VIOLATION OF CVPIA SECTION 3411(A) AND 43 U.S.C. § 383)

74. Plaintiffs reallege and incorporate herein by reference the allegations of paragraphs 1 to 73.

75. California law requires that an applicant for a water rights permit identify the place where the applicant intends to use the water it seeks to appropriate. The applications that Reclamation submitted for water rights permits for the TRD identified the place that water diverted from Trinity River would be used as the CVP service area. The applications did not include the lower Klamath River as an intended place of use.

76. The water permits issued to Reclamation by the State Water Resources Control Board approved the diversion and use of water based upon and as described in Reclamation's

applications, and subject to additional terms and conditions identified by the Board. The existing water rights permits applicable to the TRD do not approve use of water diverted by the TRD in the lower Klamath River.

77. Section 3411(a) of the CVPIA directs that "the Secretary shall, prior to the reallocation of water from any . . . place of use specified within applicable Central Valley Project water rights and licenses to a . . . place of use not specified within said permits or licenses, obtain a modification in those permits and licenses, in a manner consistent with the provisions of applicable State law, to allow such change in . . . place of use."

78. Section 8 of the Reclamation Act requires Defendants "to proceed in conformity with" State law "relating to the control, appropriation, use or distribution of water used in irrigation. " 43 U.S.C. § 483.

79. Chapter 10 of Division 2 of the California Water Code (commencing at Section 1700) provides a procedure and substantive requirements for an amendment to the approved place of use under a water rights permit. The process includes notice to interested persons and a right to protest.

80. Defendants have not obtained a modification of the approved place of use under the TRD permits to add the lower Klamath River in accordance with the requirements of California law.

81. The proposed allocation of stored TRD water for use in the lower Klamath River in August and September 2013 without first obtaining a modification of the permitted place of use under the State water rights permits applicable to the TRD is a violation of Defendants' mandatory duties under CVPIA section 3411(a) and 43 U.S.C. section 483.

WHEREFORE, Plaintiffs pray for relief as more fully set forth below.

VII.

THIRD CLAIM FOR RELIEF (DEFENDANTS HAVE FAILED TO COMPLY WITH THE NATIONAL ENVIRONMENTAL POLICY ACT REGARDING THE 2013 RELEASES)

82. Plaintiffs reallege and incorporate herein, as if set forth in full, each and every allegation contained in paragraphs 1 through 81, inclusive, of this Complaint and further allege:

83. Reclamation is a federal agency subject to NEPA. NEPA requires that "to the fullest extent possible," all agencies of the federal government prepare an environmental impact statement prior to implementing "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

84. At a minimum, based on the available information, there are substantial questions whether the August and September 2013 releases may have a significant effect on the human environment. Under NEPA, Defendants are therefore required to prepare an environmental impact statement before proceeding with the releases.

85. Defendants' decision to proceed with the releases without preparing an environmental impact statement is arbitrary and capricious. In the final EA/FONSI for the August and September 2013 releases, Defendants have failed to take a hard look at the consequences of the releases, failed to provide a convincing statement of reasons to explain why the impact of the releases will be insignificant, and failed to base their decision on a consideration of all the relevant factors.

WHEREFORE, Plaintiffs pray for relief as more fully set forth below.

VIII.

FOURTH CLAIM FOR RELIEF
(THE 2012 RELEASES, AND RECLAMATION'S FAILURE TO KEEP ITS COMMITMENTS RELATED TO THOSE RELEASES, ARE ARBITRARY, CAPRICIOUS AND AN ABUSE OF DISCRETION)

86. Plaintiffs reallege and incorporate herein, as if set forth in full, each and every allegation contained in paragraphs 1 through 85, inclusive, of this Complaint and further allege:

87. The year type for 2012 under the ROD was "normal." Under the ROD, Defendants were limited to releases for fishery purposes totaling 647,000 acre-feet for 2012. In August and September of 2012, however, Defendants made additional releases of nearly 40,000 acre-feet for the purpose of reducing risk of disease outbreak among Chinook salmon in the lower Klamath River.

88. The additional August and September releases in 2012 were for fishery

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purposes. As a result of those additional releases, the total volume of releases for fishery purposes in 2012 was approximately 687,000 acre-feet, and hence the total volume of releases in 2012 exceeded the 647,000 acre-feet volume limit for 2012 set by the ROD. Defendants' 2012 action is a violation of Defendants' mandatory duty under CVPIA section 3406(b)(23) to implement the releases and operating criteria set forth in the ROD.

89. The release of stored TRD water for use in the lower Klamath River in August and September 2012 without first obtaining a modification of the permitted place of use under the State water rights permits applicable to the TRD is a violation of Defendants' mandatory duties under CVPIA section 3411(a) and 43 U.S.C. section 483.

90. At a minimum, based on the available information, there were substantial questions whether the August and September 2012 releases might have a significant effect on the human environment. Under NEPA, Defendants were therefore required to prepare an environmental impact statement before proceeding with the releases.

91. Defendants failed to prepare an environmental impact statement prior to making the August and September 2012 additional releases. Instead, Defendants prepared an environmental assessment, and issued a finding of no significant impact on August 10, 2012.

92. Defendants' decision to proceed with the 2012 additional releases without preparing an environmental impact statement under NEPA is arbitrary and capricious. Defendants failed to take a hard look at the consequences of the August and September additional releases, failed to provide a convincing statement of reasons to explain why the impact of the releases would be insignificant, and failed to base their decision on a consideration of all the relevant factors.

93. Plaintiffs communicated their objections to the releases to Reclamation in early July 2012. In response, Reclamation made three commitments to Plaintiffs documented in a July 27, 2012 letter from then Regional Director Don Glaser to Dan Nelson: (1) that if Plaintiffs did not dispute the proposed action, Defendants would not assert that as a waiver of Plaintiffs' claims the action was illegal; (2) Reclamation promised to mitigate any loss of water supply to its CVP contractors in 2013-2014 resulting from the releases; and (3) Reclamation further promised to

develop a "long-term strategy for addressing fall fish needs on the Lower Klamath River." Reclamation has not kept the second and third commitments, and whether it will keep the first remains to be seen. A copy of the July 27, 2012 letter is attached as Exhibit 4.

94. In the summer of 2012, the CVP water supply situation was better than it is now in 2013. But as a result of the dry hydrology since, Trinity Reservoir did not refill in 2013. Plaintiffs have been and are still being harmed by those 2012 releases, because they created a nearly 40,000 acre-feet hole in TRD storage. And now the CVP water supply and projected carry over storage is much worse than in 2012.

95. Defendants have done nothing to mitigate the CVP's loss of the nearly 40,000 acre-feet of water above the ROD flows released from the TRD in August and September 2012.

96. Nor have Defendants developed a long term strategy for addressing the needs of fish in the lower Klamath River in the late summer and early fall. For example, Defendants could have, but did not, provide for such flows out of the block of water dedicated for fishery releases under the ROD for 2013. Over the past year, Defendants could have, but have not, prepared an environmental impact statement to address the impacts of making these late summer and early fall releases.

97. Instead, in August of 2013, Defendants are attempting yet another last-minute, ill-considered and illegal release of TRD stored water to the Trinity River that under the ROD is designated for CVP uses.

98. Defendants' decisions to make the additional fishery releases in August and September of 2012, and to not honor Reclamation's commitments in the July 27, 2012 letter, are final agency actions for which there is no other adequate remedy in a court, within the meaning of APA § 704.

99. The Defendants' decisions to make the 2012 releases and to disregard Reclamation's commitments in the July 27, 2012 letter relating to those releases are: (1) arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law; (2) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right; and (3) without observance of procedure required by law, within the meaning of 5 U.S.C. § 706(A), (C) and (D).

Under APA section 706, the Court must therefore hold unlawful and set aside Defendants' action.

100. Plaintiffs have exhausted any and all administrative remedies required by law. Plaintiffs have no plain, speedy or adequate remedy at law regarding the 2012 releases.

WHEREFORE, Plaintiffs pray for relief as more fully set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for preliminary relief and judgment as follows:

1. For an order setting aside Defendants' decisions to make additional releases of stored water from the TRD in August and September of 2012 and August and September 2013;

2. For an order declaring that the releases of stored water from the TRD in August and September of 2012 and August and September 2013 in excess of the volume of releases set by the ROD for each year are contrary to CVPIA section 3406(b)(23), and are unlawful, arbitrary, capricious and in excess Defendants' authority and discretion;

3. For an order declaring that the lower Klamath River is not a permitted place of use under the water rights permits issued by the State of California for the TRD, and that absent modification of such permits releases of stored water from the TRD for use in the lower Klamath River are prohibited by CVPIA section 3411(a) and 43 U.S.C. section 383, and are unlawful, arbitrary, capricious, an abuse of discretion, and in excess Defendants' authority and discretion;

4. For an order declaring that the releases of stored water from the TRD in August and September 2012 and August and September 2013 are major federal actions significantly affecting the human environment, that Defendants have not complied with NEPA with regard to such releases, and the releases are unlawful, arbitrary, capricious, an abuse of discretion, without observance of procedure required by law, and in excess of Defendants' authority and discretion;

5. For a temporary restraining order and preliminary injunction prohibiting the Defendants, and the individual officers thereof, and their successors, and any persons or entities acting in concert with them, from making the releases of stored water from the TRD planned for August and September 2013, and for further preliminary injunctive relief in the event that Defendants propose other or additional unlawful releases prior to the resolution of the merits of

the claims alleged herein;

6. For a permanent injunction prohibiting Defendants from operating the TRD in violation of CVPIA section 3406(b)(23) and the ROD, CVPIA section 3411(a), 43 U.S.C. section 383, and NEPA;

7. For costs of suit, including reasonable attorneys' fees; and

8. For such other and further relief as the Court may deem just and proper.

Dated: August 7, 2013.

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

By:/s/ *Daniel J. O'Hanlon*
Daniel J. O'Hanlon
Attorneys for Plaintiffs
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY and WESTLANDS WATER DISTRICT

EXHIBIT 1

U.S. Department of the Interior
Record of Decision
Trinity River Mainstem Fishery Restoration
Final Environmental Impact Statement/Environmental Impact Report
December 2000

I. Introduction and Statement of Decision

The Trinity and Klamath Rivers in northern California once teemed with bountiful runs of salmon and steelhead. Historically, hundreds of thousands of salmon and steelhead would enter the Klamath estuary and migrate upstream during several months of the year. After traveling through the lower 44 miles of the Klamath River, many of these fish would turn south at the confluence of the Trinity River and continue their journey to the middle and upper Trinity River. Adult salmon and steelhead would spawn in the clean gravels of the mainstem Trinity and several of its tributaries. Millions of young salmonids would then emerge from the gravel between January and June and rear in the diversity of habitats found in the river. The young of some species would begin their downstream migration to the Pacific Ocean within a few months of emerging from the gravel where they were spawned. Others remained in the river for a year or more before beginning their downstream migration. All of these fish would grow as they moved downstream through the Trinity, lower Klamath Rivers and Klamath estuary, undergoing physiological changes in preparation for life in the ocean. Suitable habitat and water quality were critical for the young salmon and steelhead during every stage of their outmigration in order for them to grow and become physically able to tolerate the transition to ocean life. After several years in the ocean fish return to the Klamath River as adults and once again begin the upstream migration to the Trinity River to spawn in their natal streams.

These impressive fish stocks defined the life and culture of the Hoopa Valley and Yurok Indian Tribes, and reservations were established along the Trinity and lower Klamath Rivers in the mid- to late-1800s based in large part on the Tribes' reliance on these resources. The abundance of the region's fishery resources also helped support the economy and way of life for the people of the region as a whole.

The once majestic runs in the Trinity River experienced significant declines following the construction and operation of the Central Valley Project's Trinity River Division (TRD) in the early 1960s. The TRD not only eliminated 109 miles of important salmonid habitat above Lewiston, California, but also exported to the Sacramento River as much as 90 percent of the waters flowing into the Trinity River at Lewiston, California. In authorizing the TRD, Congress believed water excess to the needs of the Trinity Basin could be diverted to the Central Valley while still ensuring the preservation and propagation of the Trinity Basin's fish and wildlife resources. Since the precipitous fishery declines, Congress has enacted several pieces of legislation directing the restoration of fish populations in the Trinity River. In addition to various multi-jurisdictional efforts over the years, the U.S. Fish and Wildlife Service (Service), in conjunction with the Hoopa Valley Tribe, completed the Trinity River Flow Evaluation Study

(TRFES) in 1999 which sought to determine instream flows and other measures necessary to restore and maintain the Trinity River's fishery.

This Record of Decision (ROD) culminates nearly twenty years of detailed, scientific efforts, conducted over the course of the past four Administrations, and documents the selection of actions determined to be necessary and appropriate to restore and maintain the anadromous fishery resources of the Trinity River. These actions, and other potential alternative actions, have been described and fully evaluated pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), and the California Environmental Quality Act (CEQA) in both a draft and the Final Environmental Impact Statement/Environmental Impact Report (FEIS/EIR) (October 2000b), herein incorporated by reference. The Service, the Bureau of Reclamation (Reclamation), the Hoopa Valley Tribe, and the County of Trinity, California jointly prepared the DEIS/EIR and the FEIS/EIR. The necessity for these actions results from the various statutory obligations of the Department as well as the federal trust responsibility to the Hoopa Valley and Yurok Indian Tribes.

For the reasons expressed in this ROD, the Department's agencies are directed to implement the Preferred Alternative as described in the FEIS/EIR and as provided below. This alternative best meets the statutory and trust obligations of the Department to restore and maintain the Trinity River's anadromous fishery resources, based on the best available scientific information, while also continuing to provide water supplies for beneficial uses and power generation as a function of Reclamation's Central Valley Project (CVP).

In making this decision, the information and analyses contained in the FEIS/EIR have been reviewed and considered in detail, including; 1) the various alternatives considered to achieve the statutory and trust obligations imposed upon the Department, 2) the environmental and other factors relevant to making this decision, 3) the mitigation available to reduce or eliminate negative impacts which could result from this decision, 4) the comments received on both the DEIS/EIR and the FEIS/EIR, and 5) the Biological Opinions from the Service and the National Marine Fisheries Service (NMFS), also incorporated by reference, which evaluate the impacts of implementing the Preferred Alternative to species listed pursuant to the Endangered Species Act. Sufficient legal authority exists to implement this decision.

This decision recognizes that restoration and perpetual maintenance of the Trinity River's fishery resources require rehabilitating the river itself, restoring the attributes that produce a healthy, functioning alluvial river system. Therefore, the components of the selected course of action include:

- Variable annual instream flows for the Trinity River from the TRD based on forecasted hydrology for the Trinity River Basin as of April 1st of each year, ranging from 369,000 acre-feet (af) in critically dry years to 815,000 af in extremely wet years;

- Physical channel rehabilitation, including the removal of riparian berms and the establishment of side channel habitat;

- Sediment management, including the supplementation of spawning gravels below the TRD and reduction in fine sediments which degrade fish habitats;

- Watershed restoration efforts, addressing negative impacts which have resulted from land use practices in the Basin; and

- Infrastructure improvements or modifications, including rebuilding or fortifying bridges and addressing other structures affected by the peak instream flows provided by this ROD.

The selected alternative also includes an Adaptive Environmental Assessment and Management (AEAM) Program. The AEAM Program, guided by a Trinity Management Council (TMC) established as part of this decision and by sound scientific principles, will ensure the proper implementation of these measures, conduct appropriate scientific monitoring and evaluation efforts, and recommend possible adjustments to the annual flow schedule within the designated flow volumes provided for in this ROD or other measures in order to ensure that the restoration and maintenance of the Trinity River anadromous fishery continues based on the best available scientific information and analysis.

This ROD and its attachments: 1) provide background information about the necessity for and development of the chosen action; 2) describes the alternatives considered in reaching the decision, including the environmentally preferred alternative; 3) summarizes the key provisions of the decision; 4) presents the rationale for and critical issues considered in making the decision; 5) describes mitigation measures available (and other environmental commitments) to avoid or minimize environmental harm that may result from implementing the decision; 6) reviews the public involvement process conducted during these efforts; and 7) discusses comments received on the FEIS/EIR.

II. Background

A. Historic Trinity River and its Resources

Historically, the Trinity River achieved attention and fame for its abundance of salmon and steelhead. Annual salmon runs in the Klamath Basin, including the Trinity River as its largest tributary, once reportedly totaled approximately 500,000 salmon. At the peak of the salmon cannery industry, which dominated the area at the turn of the 20th century, approximately 141,000 salmon were harvested and canned within the Klamath estuary (Snyder 1931).Various investigations made prior to construction of Lewiston and Trinity dams provide estimates of the historic numbers of fish in the Trinity. Estimates of the number of fall chinook salmon that migrated above the North Fork Trinity River before construction of the dams range from

approximately 19,000 to over 75,000 (TRFES,1999) (see FEIS/EIR, Appendix B for further details of the fishery resources of the Trinity).

The fishery and other resources of the Trinity River and the lower Klamath River Basins defined the life and culture of area Indians since time immemorial. Salmon and other fish historically provided the primary dietary staple for the Indians in the area; prior to non-Indian settlement in the basin, reports indicate that local Indians consumed over 2 million pounds of salmon annually. The fishery resources supported commercial and subsistence economies for the Indians and also played a significant role in their religious beliefs. Fishery resources of the area have been characterized as "not much less necessary to the existence of the Indians than the atmosphere they breathed." Blake v. Arnett, 663 F.2d 906, 909 (9th Cir. 1981) (quoting United States v. Winans, 198 U.S. 371, 381 (1905)). As previously described by the Department's Solicitor, a specific, primary purpose for establishing the reservations of the Hoopa Valley and Yurok Tribes in the mid- to late-1800s–which are bisected by the Trinity and lower Klamath Rivers, respectively–"was to secure to these Indians the access and right to fish without interference from others" in order to preserve and protect their right to maintain a self-sufficient livelihood from the abundance provided by the rivers (Memorandum from Solicitor to Secretary, Fishing Rights of the Yurok and Hoopa Valley Tribes, M-36979, at 15, 18-21 (Oct. 4, 1993)).

B. Planning and Construction of the CVP's Trinity River Division

Over time and with the increase of populations and development in California, particularly in the Central Valley, efforts focused on the Trinity River as a resource to supplement the needs of other areas of California. Initial plans to divert Trinity River water to the Sacramento River were included in the California State Water Plan in the 1930s, but later dropped. Proposals were reinitiated in the late 1940s, and the Department provided to Congress reports and findings on a proposed plan of development in the early 1950s. These reports indicated that more than 1.1 million af of inflow occurred on average from the upper Trinity River Basin above Lewiston. Based on these reports, Congress concluded that water "surplus" to the present and future water needs of the Trinity and Klamath Basins–then estimated at approximately 700,000 af and considered "wasting to the Pacific Ocean"--could be diverted to the Central Valley "without detrimental effect to the fishery resources." (H.R. Rep. No. 602, 84th Cong., 1st Sess. 4-5 (1955); S. Rep. No. 1154, 84 Cong., 1st Sess. 5 (1955)). In fact, the underlying reports suggested that development of the Trinity River Division, and the resulting diversions, would not only maintain but also improve fishery conditions in the Trinity River, with as little as 120,500 af of water per year from above Lewiston dedicated to the fishery. Based on these understandings, Congress passed legislation authorizing the Trinity River Division (TRD) on August 12, 1955 (Pub. L. No. 84-386) (1955 Act). Although Congress authorized the TRD as an integrated component of the CVP, section 2 of the 1955 Act specifically directed the Secretary of the Interior to ensure the preservation and propagation of fish and wildlife in the Trinity Basin through the adoption of appropriate measures.

C. Impacts Caused by the TRD and Early Efforts to Address those Impacts

Unfortunately, construction and operation of the TRD resulted in unintended, yet severely detrimental impacts to the Trinity River and its fish populations. Early studies suggested that low flows could possibly sustain spawning populations of salmonids below Lewiston (Moffet and Smith 1950, USFWS and CDFG 1956). These and other early studies focused more on chinook salmon spawning populations than on other species or lifestages, and did not entirely account for the geomorphic changes that would occur under a reduced flow in the mainstem. Relying upon these early studies, TRD diversions to the Central Valley averaged nearly 90 percent of the upper Trinity Basin inflow for the first ten years of full TRD operations, with the TRD exporting on average 1,234,000 af annually from the 1,396,000 af total average inflow into Trinity Lake (formerly Clair Engle Reservoir). Construction of the two dams on the Trinity River, Trinity and Lewiston Dams, also resulted in the loss of all upstream spawning and rearing habitat. As subsequent studies have shown, the TRD also caused the rapid degradation of fish habitats below the dams, through the elimination of gravels from above the dams necessary for spawning habitat and the inability of the substantially reduced and static flows from the TRD to flush fine sediments from the existing gravels. The resulting channelization of the river (in which riparian vegetation encroached upon the channel, trapped fine sediments, and formed fossilized berms) further degraded available habitats.

At the same time that fish were forced to use a much smaller amount of area, the quality of habitat below Lewiston began to decline almost immediately following completion of the dams. Gravels necessary for spawning habitat were trapped above the dams. Deep pools that were essential for holding adults began to fill with fine sediment. Since flows were no longer sufficient to move fine sediment from tributary flows out of the mainstem, gravel and cobble became compacted with sand and silt rendering spawning gravels unsuitable for salmon reproduction. As sand accumulated along the banks of the river, the shape of the Trinity below Lewiston changed from a meandering alluvial river with large cobble bars to a narrow, steep-sided channel. Moderate flows that resulted from tributary floods resulted in greatly increased water velocity in the mainstem without resultant increases in useable habitat because most flow was contained within the main channel and not connected with the historic floodplain.

Within a decade, salmon and steelhead populations declined significantly. Various efforts (including the formation of a task force of federal, state, tribal, and local agencies) began evaluating the effects on the Trinity River's fishery resources and the likely causes for these declines. The Service completed an EIS in 1980 which estimated fish population reductions of 60 to 80 percent since completion of the TRD. Subsequent studies have also indicated extensive reductions in fish populations (see Appendix B of the FEIS/EIR). The 1980 EIS attributed this severe and rapid depletion of fish populations to three causative factors: inadequately regulated harvest, excessive streambed sedimentation, and insufficient streamflows. The latter two elements impact key components of salmonid habitat. In fact, the EIS estimated the loss of fishery habitats in the Trinity River Basin to be 80 to 90 percent. Thus, shortly after construction of the TRD, the Trinity River no longer provided the abundant resources and pristine area that the public treasured and resident Tribes depended upon for physical and spiritual sustenance. Degradation of Trinity River fishery habitat was one of the reasons for listing of Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*) as threatened

under the Endangered Species Act (May 6, 1997, 62 FR 24588).

The 1980 EIS recognized that all factors attributed to salmonid losses must be addressed. Tribal harvest, commercial harvest and sport harvest have been restricted over time. The 1980 EIS also concluded, however, that insufficient streamflows represented the most critical limiting factor and that increasing flows was a necessary first step to the restoration of the Trinity River fisheries. Contemporary legal opinions of the Department considered the ability to increase streamflows in light of the 1955 Act and concluded that section 2 of that Act requires that the instream flow needs of the Trinity Basin must be met first prior to exporting water to the Central Valley (*e.g.*, Memorandum from the Solicitor to Assistant Secretary – Land and Water Resources, *Proposed Contract with Grasslands Water District* (December 7, 1979)).

D. 1981 Andrus Decision

The 1980 EIS did include interim flow recommendations, but also recommended a more complete analysis. Former Secretary of the Interior Cecil D. Andrus considered the findings of the 1980 EIS as well as the statutory and tribal trust responsibilities involved. With respect to the trust obligations of the Department, Secretary Andrus found that:

> the Hupa and Yurok Indians have rights to fish from the Trinity and Klamath Rivers . . . These rights are tribal assets which the Secretary, as trustee, has an obligation to manage for the benefit of the tribes. The Secretary may not abrogate these rights even if the benefit to a portion of the public from such an abrogation would be greater than the loss to the Indians.

Secretarial Issue Document, Trinity River Fishery Mitigation, at 3 (January 1981) (1981 SID). The Secretary also found that the trust obligation "includes both a duty to preserve the trust assets and to make them productive." The Secretary concluded that the statutory and trust obligations of the Department compelled the restoration of the Trinity River anadromous fishery to pre-TRD levels. Therefore, Secretary Andrus directed the Service to complete a 12-year study which would assess the effectiveness of flow and habitat restoration efforts and make recommendations on measures necessary to address the fishery impacts attributable to the TRD consistent with the Department's obligations.

E. Congressional Direction to Address the Impacts

At this same time, Congress also turned to the growing problems facing the Trinity River and its dwindling fishery resources. The first step came in 1980 with the passage of the Trinity River Stream Rectification Act (Pub. L. No. 96-335) which aimed to control sand deposition problems resulting from the degraded Grass Valley Creek watershed, a tributary of the Trinity River, and the inability of the low annual mainstem flows to flush these sediments through the system. In 1984, Congress passed the second, more critical step – the Trinity River Basin Fish and Wildlife Management Act (Pub. L. No. 98-541). The 1984 Act made findings similar to those in the 1980 EIS and recognized that TRD operations substantially reduced instream flows in the Trinity

River, resulting in degraded fish habitat and consequently a drastic reduction in anadromous fish populations. The 1984 Act directed the Secretary to develop a management program to restore fish and wildlife populations in the Basin to levels approximating those that existed immediately before TRD construction began. The program would include measures to rehabilitate fish habitats in the mainstem Trinity River and its tributaries below Lewiston Dam, increase the effectiveness of the Trinity River Fish Hatchery, and monitor fish and wildlife populations and the effectiveness of rehabilitation efforts. The program would also include any other activities necessary to achieve the restoration goals. Amendments to the 1984 Act redefined its restoration goals so that the fishery restoration would be measured not only by returning anadromous fish spawners, but also by the ability of dependent tribal and non-tribal fishers to participate fully in the benefits of restoration through meaningful harvest opportunities. (These restoration goals were reaffirmed through enactment of the Trinity River Fish and Wildlife Management Reauthorization Act of 1995, Pub. L. No. 104-143, May 15, 1996).

Congress provided the third step with the passage of the Central Valley Project Improvement Act (CVPIA) in 1992. The CVPIA listed among its purposes the need "to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River Basins" and the need "to address impacts of the Central Valley Project on fish, wildlife, and associated habitats." Although the CVPIA includes several provisions related to the TRD, the primary Congressional direction occurs in section 3406(b)(23). Pending completion of the TRFES and implementation of it recommendations, Congress set the minimum flow volume in the Trinity River at not less than 340,000 af based on the supplemental Secretarial Decision signed by former Secretary of the Interior Manuel Lujan in 1991. The Trinity provision of the CVPIA specifically directed the completion of the 12-year study (TRFES) called for by Secretary Andrus "in a manner which insures the development of recommendations, based on the best available scientific data, regarding permanent instream fishery flow requirements and [TRD] operating criteria and procedures for the restoration and maintenance of the Trinity River fishery." Upon concurrence of the Secretary and the Hoopa Valley Tribe, the provision Congressionally mandates the Secretary to implement the recommendations from the study accordingly. That statute also provides that if the secretary and the Hoopa Valley Tribe do not concur, the flows in the Trinity River may be increased by an Act of Congress, appropriate judicial decree, or agreement between the Secretary and the Hoopa Valley Tribe.

F. Trinity River Flow Evaluation Study

Following the 1981 Secretarial Decision, the Service developed a plan of study and began the TRFES. Four annual flow volumes were to be evaluated under the TRFES: 140,000 af, 220,000 af, 287,000 af and 340,000 af. Release schedules for each of the water volumes were to be assessed for their ability to meet criteria necessary to restore and maintain the fishery resources of the Trinity River. The TRFES report was also to recommend specifically what actions should be continued, eliminated or implemented to mitigate fish population declines attributable to the TRD.

Flow evaluation studies were conducted annually between 1983 and 1994 by Service biologists

in Lewiston. Scientists and technicians from several agencies and tribes working under direction of the 1984 Act coordinated with TRFES biologists to implement recommendations developed during the TRFES annual studies.

The Service and Hoopa Valley Tribe released the TRFES in June 1999. Their report concluded that the flow "alternatives" identified for study in the 1981 Secretarial Decision cannot meet the biological and geomorphic habitat requirements necessary to restore naturally produced salmonid populations in the mainstem Trinity River. The TRFES recommended specific annual flow releases, sediment management, and channel rehabilitation to create and sustain a dynamic alluvial channel that will provide the necessary habitat. The Preferred Alternative, as described in the FEIS/EIR and summarized in this ROD, adopts the recommendations contained in the TRFES, is based on the extensive scientific studies contained in the TRFES, and is the most practical and scientifically based restoration strategy.

This ROD represents the culmination of over two decades of efforts aimed at understanding the necessary instream flow and physical habitat restoration requirements in order to restore the Trinity River anadromous fishery. Statutory requirements since 1955, based in large part upon the federal government's trust obligations to the Hoopa Valley and Yurok Tribes, require the restoration and maintenance of the Trinity River anadromous fishery resources to pre-dam levels. It is clear that restoration must provide for a meaningful fishery, not only for the Tribes, but also for commercial, sport, and recreational fishermen. These important resources represent both tribal trust and public treasures from which all should benefit - to restore the faith of our tribal beneficiaries and to improve the economic well-being of the Trinity Basin and North Coast as a whole.

III. NEPA/CEQA Process

NEPA requires federal agencies to analyze and disclose the environmental effects of their proposed actions. To ensure full compliance with NEPA, the Service initiated the environmental review process to develop and assess alternatives aimed at restoring the Trinity River mainstem fishery by publishing a Notice of Intent (NOI) to prepare an EIS in the Federal Register on October 12, 1994 (59 Fed. Reg. 25141). Shortly thereafter, Trinity County initiated the concurrent CEQA process by forwarding a Notice of Preparation (NOP) of an EIR to the State Clearinghouse on November 16, 1994.

The Service and Trinity County served as the designated lead agencies for NEPA and CEQA purposes, respectively, for this joint environmental review because of their particular roles in developing the TRFES and in permitting certain actions in Trinity County. Reclamation and the Hoopa Valley Tribe also served as co-lead agencies because of their respective interests in this action. In developing this environmental review, the joint lead agencies relied extensively on the participation of thirteen local, state, and federal agencies (either cooperating, responsible, or trustee agencies) as well as involvement by the Yurok and Karuk Tribes. This review also used six technical teams--led by representatives of the Service, Reclamation, Western Area Power

Administration (WAPA), U.S. Army Corps of Engineers (Corps), and the Bureau of Land Management (BLM)—to address key issues involved in this decision.

This review provided for significant public involvement throughout the process. Numerous public meetings occurred over the past six years to scope the process; recommend potential alternatives to be evaluated; identify critical issues, including potential environmental impacts from implementing various alternatives and other areas of concern; and to inform the public about the continuing progress for this review. Various issues and concerns identified included: fishery resources, Tribal trust obligations, CVP agricultural as well as municipal and industrial (M&I) water supply and reliability, vegetation and wildlife resources, water quality and in-river temperature, water management, CVP power generation, recreation and recreation economics, socio-economics, land use, Trinity River flooding, aesthetics (related to reservoir drawdown), ocean sport and commercial fishing, and upland watershed rehabilitation.

On October 19, 1999, the Service announced the availability of the DEIS/EIR and the commencement of the public comment period (64 FR 56364). The public comment period included a series of NEPA/CEQA public hearings held in Redding, Sacramento, Eureka, and Weaverville in November and December. Although the public comment period was originally scheduled to end on December 8, 1999, the Service twice extended the time for public comments (64 FR 67584, 64 FR 72357) to January 20, 2000. A substantial number of letters and postcards commenting on the DEIS/EIR were received from 6445 people and organizations (1009 letters and 5436 pre-printed postcards). A list of the commentors and the response of the agencies to the comments were presented the FEIS/EIR. On November 17, 2000 the Service announced the availability of the FEIS/EIR (65 FR 69512). See Appendix A for details of the public involvement process and responses to comments on the FEIS/EIR.

IV. Alternatives

In accordance with NEPA and CEQA, the FEIS/EIR identifies a range of reasonable alternatives, based on public input, scientific information, and professional judgment. The FEIS/EIR examined the affected environment and the environmental consequences for numerous alternatives: 1) No Action Alternative; 2) Maximum Flow Alternative; 3) Flow Evaluation Alternative; 4) Percent Inflow Alternative; 5) Mechanical Restoration Alternative; 6) State Permit Alternative, and the 7) Preferred Alternative. These are described in detail in the FEIS/EIR. In addition, all alternatives were compared to the No Action and Existing Conditions scenarios, as required by NEPA and CEQA, respectively. The FEIS/EIR considered but rejected other alternatives, also described in detail in the FEIS/EIR and summarized below.

No Action Alternative: represents ongoing activities and operations and the anticipated future condition of the affected environment in the year 2020 in the absence of project implementation. Flow releases to the Trinity River under current operations would remain unchanged which are 340,000 af annually.

Maximum Flow Alternative: would use all of the Trinity River inflows above the Trinity Dam to restore the river ecosystem through managed flows with no water exported to the Sacramento River system.

Flow Evaluation Alternative: is based on the recommendations in the TRFES and includes increased variable annual instream flow releases from Lewiston Dam, a coarse sediment introduction program, 47 new channel projects (mechanical channel rehabilitation), and implementation of an adaptive management program.

Percent Inflow Alternative: would approximate natural flow patterns, at a reduced scale, by releasing water into the Trinity River at a proportion of the rate it flows into the Trinity Reservoir.

Mechanical Restoration Alternative: would use the same water management as the No Action Alternative (i.e., 340,000 af), but would include constructing 47 new channel projects, mechanically maintaining these new projects as well as existing projects, dredging 10 pools in the Trinity River mainstem (most likely on an annual basis), and initiating a watershed protection program.

State Permit Alternative: would use the minimum flow levels as provided in the 1955 Act and specified in Reclamation's seven California water permits issued in 1959. Under this alternative, Trinity River instream flows would be reduced from the No Action levels of approximately 340,000 af of water per year to 120,000 af.

Preferred Alternative: consists of the Flow Evaluation Alternative which includes increased variable annual instream flow releases from Lewiston Dam, a coarse sediment introduction program, 47 new channel projects (mechanical channel rehabilitation), and implementation of an adaptive management program. Additionally, this alternative includes a watershed restoration program identical to the watershed protection efforts identified in the Mechanical Restoration Alternative.

Other Alternatives: Other alternatives were suggested in scooping for the draft EIS. Pages 2-35 through 2-42 of the draft EIS described eight alternatives considered but not forwarded for further consideration. The alternatives of harvest management, improving fish passage facilities, trucking fish around the dams, predator control, increased hatchery production, pumped storage, and channel augmentation using Weaver Creek were eliminated because they would not achieve the fishery restoration objectives. The alternative of removing Trinity and Lewiston Dams was not considered a viable alternative because of the environmental impacts, forgone benefits, and costs associated with dam removal. Other alternatives were suggested in public comments on the draft EIS/EIR and were evaluated in developing the FEIS/EIR. The Sacramento Municipal Utility District (SMUD), provided comments that recommended additional mechanical manipulations and alternative flow schedules. The SMUD alternative was evaluated and analyzed using the same fishery resource model as the other alternatives contained in the

FEIS/EIR. As shown in the FEIS/EIR (starting at page D2-37 and also in the specific responses to SMUD's comment letter) the SMUD alternative would require a significant amount of additional annual mechanical restoration in the channel, with associated increased costs, and would not substantially increase natural production above that anticipated under the Mechanical Restoration Alternative. As described in the FEIS/EIR(pages D2-35 through D2-38), the other suggested alternatives were either minor variations of alternatives already examined or would not meet the physical and biological objectives necessary for recovery of the fishery resources of the Trinity River and thus did not warrant further consideration in the FEIS/EIR.

Environmentally Preferred Alternative: The Preferred Alternative has been chosen as the Environmentally Preferred Alternative. The Preferred Alternative will restore the diverse fish habitat necessary to restore the anadromous fishery of the Trinity River. This alternative also causes the least damage to the biological and physical environment and best protects, preserves, and enhances historic, cultural, and natural resources. Implementation of the Preferred Alternative will not jeopardize the continued existence of any listed species under the Endangered Species Act, or destroy or adversely modify the critical habitat for any listed species under the Endangered Species Act. Additionally, the Preferred Alternative also includes a watershed management plan as well as measures to minimize and mitigate impacts (as outlined in section V(G) and Appendix C). For these reasons, the Preferred Alternative is the Environmentally Preferred Alternative.

V. Components of the Decision

For the reasons expressed in this ROD, the Department's agencies are directed, through the Trinity Management Council, to implement the Preferred Alternative as described in the FEIS/EIR and to implement the reasonable and prudent measures described in the NMFS and Service Biological Opinions. The Preferred Alternative incorporates the recommendations developed in the TRFES and evaluated under the Flow Evaluation Alternative, coupled with the additional watershed protection efforts identified in the Mechanical Restoration Alternative. Although the Secretary retains ultimate authority over this program, by this Record of Decision, the Trinity Management Council is established which will guide overall implementation of the management actions of the Implementation Plan.

Reclamation and the Service, as the Secretary's representatives on the Trinity Management Council, will be responsible for assuring that the restoration is carried out in a timely manner and that progress reports are submitted to the Department and to the Congress. On behalf of the Secretary, Reclamation and the Service should identify sources of funding necessary to implement the restoration program (FEIS/EIR at pages C-16 and C-17). As with all other federal programs, implementation is contingent upon Congress appropriating funds.

The suite of actions which make up the Preferred Alternative is designed to restore the Trinity River mainstem fisheries and avoid or minimize potential adverse effects. Implementation of the fishery restoration program will involve several components that will be implemented over time.

The Implementation Plan contained in the FEIS/EIR (FEIS/EIR pages C-1 through C-39) describes in detail the activities which comprise this comprehensive program for Trinity River mainstem fishery restoration and is adopted as part of this decision. Sufficient information exists for implementation of certain actions under this decision, and adjustments may be made to certain elements of the fishery restoration plan based on continuing scientific monitoring and studies called for in the Adaptive Environmental Assessment and Management Program (AEAM). The Trinity Management Council, will consult on these actions with the Hoopa Valley and Yurok Tribes and other responsible Federal, State and local jurisdictions, and private landowners as appropriate. The main elements of this Decision its Implementation Plan are summarized below:

A. Variable Annual Flow Regime

Reclamation will provide annual instream flows below Lewiston Dam according to the recommendations provided in the TRFES and adopted in the FEIS/EIR Preferred Alternative. The total volume of water released from the TRD to the Trinity River will range from approximately 369,000 af to 815,000 af, depending on the annual hydrology (water-year type) determined as of April 1st of each year (see Table 1, Figure 1, and ROD Appendix B). The recommended flow regimes link two essential purposes deemed necessary to restore and maintain the Trinity River's fishery resources: 1) flows to provide physical fish habitat (i.e., appropriate depths and velocities, and suitable temperature regimes for anadromous salmonids), and 2) flows to restore the riverine processes that create and maintain the structural integrity and spatial complexity of the fish habitats. The environmental effects of implementing this flow program have been thoroughly analyzed in the FEIS/EIR; no further environmental compliance is currently anticipated for implementing the flow program. Under this decision and the NMFS and Service biological opinions, Reclamation's Operating Criteria and Procedures for the TRD have been modified to implement the Preferred Alternative's flows (FEIS/EIR pp C1-C7).

Based on subsequent monitoring and studies guided by the Trinity Management Council, the schedule for releasing water on a daily basis, according to that year's hydrology, may be adjusted but the annual flow volumes established in Table 1 may not be changed. Maximum releases from Lewiston Dam will not exceed 6,000 or 8,500 cfs depending upon the completion of specific infrastructure modifications discussed in Section V.E.

Water-year Class	Volume (Acre-feet)	Peak Flow (cfs)	Peak Flow Duration (days)
Critically dry	369,000	1,500	36
Dry	453,000	4,500	5
Normal	647,000	6,000	5
Wet	701,000	8,500	5
Extremely wet	815,000	11,000	5

Table 1. Volume, Peak Flow and Peak Flow Durations for proposed Flow Schedules for Five Water-Year Types

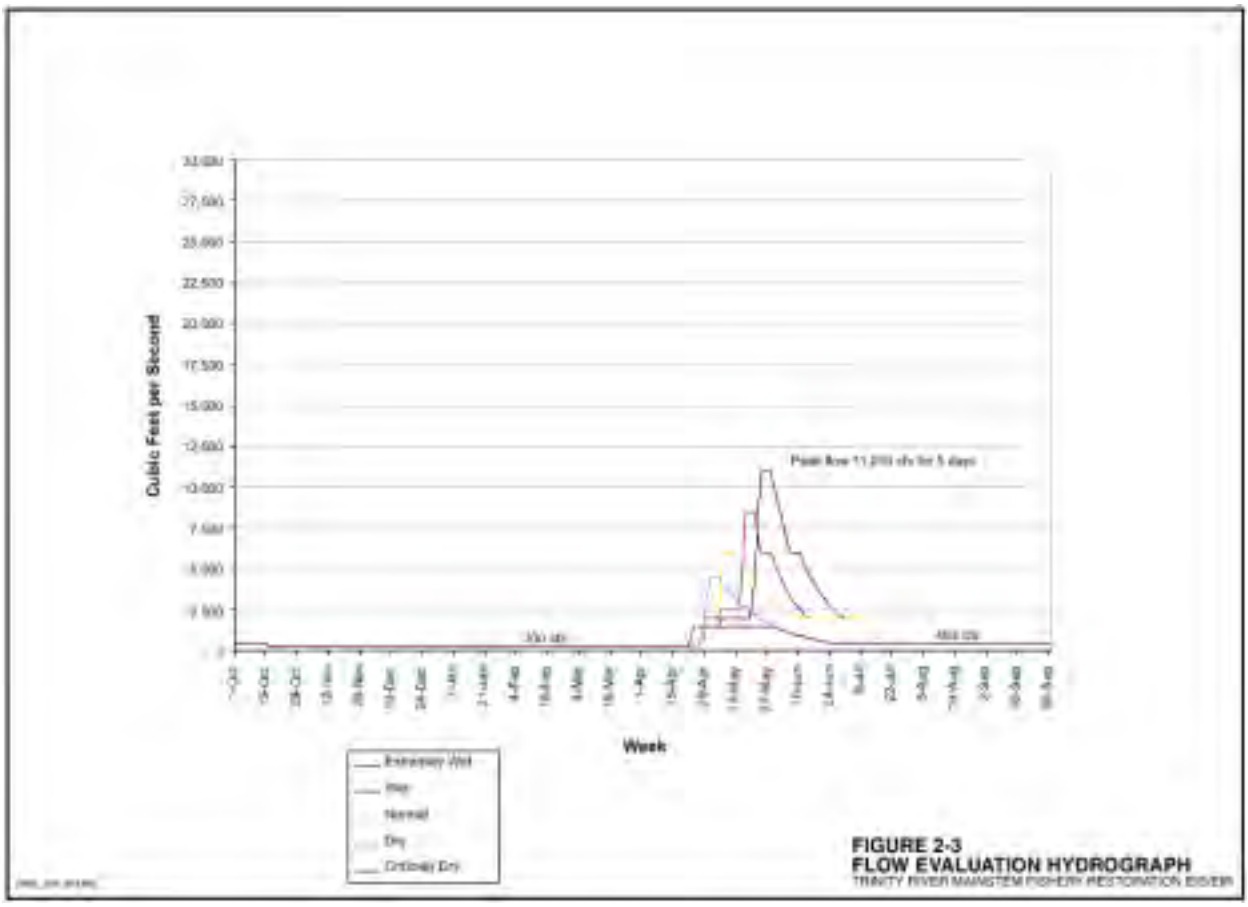


Figure 1. Flow Hydrograph for Five Water-Year Types (taken from DEIS, p. 2-19)

B. Mechanical Channel Rehabilitation

The Trinity Management Council will guide restoration and maintenance of channel morphology characteristics modeled based on pre-dam Trinity River channel morphology characteristics. This restoration, which will be implemented in phases over time, will require removal of riparian berms at 44 project areas, the establishment of side channel habitat at 3 sites and the use of increased flow releases to maintain habitat and promote the creation of alternate bar sequences. Additional environmental planning and environmental compliance steps will be performed as necessary in order to acquire all the necessary permits and other authorizations prior to implementation of this portion of the Preferred Alternative.

C. Sediment Management

The Trinity Management Council will guide a program to balance the recruitment of coarse and fine sediment of the upper river that has been disrupted by the construction and operation of the

TRD. Lewiston and Trinity dams trap all coarse sediment supply above Lewiston (gravel and cobble necessary for spawning and rearing habitat). A gravel supplementation program will be implemented in the reaches below the dam. Restoration of fluvial processes will require continued input of coarse sediment as gravels are moved and redeposited from increased flows creating necessary dynamic habitats. Required coarse sediment introductions are anticipated to average 10,300 cubic yards annually but could range from 0 to 67,000 cubic yards in any one year depending upon the water year type (Table 2). Reclamation will continue operation and maintenance of fine sediment (sand) catchment ponds on Grass Valley Creek to prevent fine sediment from reaching or remaining in the mainstem and degrading spawning and rearing habitat. Additional environmental planning and environmental compliance steps will be performed as necessary to acquire all the necessary permits and other authorizations prior to implementation of this portion of the Preferred Alternative.

Water Year	Coarse Sediment Introduction (yd^3/year)
Extremely Wet	31,000-67,000
Wet	10,000-18,000
Normal	1,800-2,200
Dry	150-250
Critically Dry	0

Table 2. Annual coarse sediment replacement estimates for the Lewiston Dam to Rush Creek Reach. Actual volume will be determined by modeled and measured transport each year.

D. Watershed Restoration

The Trinity Management Council will guide an upslope watershed restoration program to address the problems of excessive sediment input from many of the tributaries of the Trinity River resulting from land use practices. The watershed protection program of the Preferred Alternative includes road maintenance, road rehabilitation and road decommissioning on private and public lands within the Trinity River basin below Lewiston Dam, including the South Fork Trinity River basin. Approximately 80 percent of the lands within the Trinity basin are federally managed of which the USDA Forest Service administers approximately 95 percent and the Bureau of Land Management administers five percent. Of the remaining 20 percent privately-owned land in the basin, approximately half (10 percent of the total) are industrial timberlands, with the remainder being small private holdings. Additional environmental planning and environmental compliance steps will be performed as necessary in order to acquire all the necessary permits and other authorizations prior to implementation of this portion of the Preferred Alternative.

E. Infrastructure Improvement

Since construction of the TRD, human encroachment into the historic flood plain has occurred. Since infrastructure modifications represent a high priority activity for initiating flow changes, Reclamation will take appropriate steps in a timely manner to ensure that affected bridges, houses, and out-buildings are structurally improved or relocated or otherwise addressed before implementing recommended peak releases for Wet or Extremely Wet water years (8,500 and 11,000 cfs, respectively). Additional environmental planning and environmental compliance steps will be performed as necessary to acquire all the necessary permits and other authorizations prior to implementation of this portion of the Preferred Alternative.

F. Adaptive Environmental Assessment and Management Program

The Trinity Management Council will establish and guide implementation of an AEAM Program to monitor the physical and biological results of the implementation plan and guide the refinement of the flow schedules and other activities contained in this Decision/restoration plan to ensure that the ultimate goal of restoring the fishery resources of the Trinity River is achieved. Appendix C of the FEIS/EIR contains a detailed description of the AEAM.

The focus of the AEAM organization is the Trinity Management Council and an AEAM Team consisting of a Technical Modeling and Analysis Group and a Rehabilitation Implementation Group. The organization includes a support staff (AEAM Team) of engineers and scientists charged with assessing the Trinity River fishery restoration progress. The AEAM Team will coordinate independent scientific reviews of the AEAM organization and may recommend management changes based on annual assessments of the evaluation of rehabilitation and flow schedule activities. See FEIS/EIR Appendix pages C-19 though C-29 for a detailed description of the organization and roles and responsibilities of the Trinity Management Council. The Trinity Adaptative Management Working Group, a stake holder group whose participation in the program is described on page C-23 of FEIS/EIR, will be chartered under the Federal Advisory Committee Act

Nothing in this ROD is intended to preclude watershed restoration and monitoring, provided funding is available, below the confluence of the Trinity and Klamath Rivers. Because the TRFES and ROD focus on the Trinity River mainstem and Trinity Basin, watershed restoration and monitoring that benefit Trinity River fisheries below the confluence of the Trinity and Klamath Rivers may be considered by the Trinity Management Council.

G. Measures to Minimize and Mitigate Impacts

Since there may be some short-term impacts resulting from modifying river flows, channel rehabilitation, watershed protection measures, and infrastructure modifications, the Trinity Management Council will guide efforts to minimize or eliminate potential impacts prior to implementation. These are described in detail in the FEIS/EIR, listed in ROD Appendix C, and summarized below.

The reasonable and prudent measures identified in the NMFS and Service Biological Opinions will be implemented in an effort to avoid unauthorized take of listed species on the Trinity River, Sacramento Valley and Delta. The Service will coordinate with the NMFS regarding surveys for threatened coho salmon presence prior to implementation of habitat rehabilitation on the Trinity River. The NMFS and Service will coordinate work windows for these projects, as needed. All permits or other authorizations will be acquired and other environmental compliance requirements will be satisfied, as necessary, prior to initiation of any program activities.

Surveys for nesting northern spotted owls and bald eagles will occur in suitable habitat within a 0.5 mile radius of a project site prior to beginning work activities utilizing motorized equipment or chain saws. If a nesting owl is detected within a 0.25 mile radius, scheduled work activities will not occur from February 1 through July 9; if a nesting eagle is detected within a 0.5 mile radius, scheduled work activities will not occur from January 1 through August 31. Similar surveys will occur for watershed protection and restoration efforts in upland areas.

Measures will be taken to minimize any increased sedimentation/turbidity in the mainstem from mechanical disturbance, such as leaving a small berm at the edge of the channel to trap sediments until all other work is completed. Turbidity and other Clean Water Act standards, as identified by the Water Quality Control Plan for the North Coast Region, will be monitored and maintained. If standards are not met, construction activities will cease until such a time that operations or alternatives can be completed within compliance standards.

Construction of most project sites will involve removal of riparian vegetation at encroached berm areas. Construction of these channel rehabilitation sites, as presented in the FEIS/EIR, will include areas that are re-vegetated with willow, cottonwood and/or other shrub/tree species at more appropriate locations on the floodplains of the rehabilitation sites. Ultimately, natural revegetation and more proper riparian function will also occur at project sites as flow regime changes are implemented.

The lead agencies have executed a Programmatic Agreement (PA) under Section 106 of the National Historic Preservation Act with the Hoopa Valley Tribe, the State Historic Preservation Officer for California, and the Advisory Council on Historic Preservation. Under the terms of the PA, efforts will be undertaken to identify historic properties that may be affected by actions to be taken under the Preferred Alternative, and measures will be identified and implemented to avoid, minimize, or mitigate potential adverse effects upon those properties.

The segment of the Trinity River between Cedar Flat and Lewiston Dam (river miles 47.5 to 111.9) is a component of the National Wild and Scenic Rivers System (“System”). The primary outstanding remarkable value of this section of the Trinity River is recreational. Mitigation measures intended to address public safety from river flows that are too high or too low will be implemented as part of the Preferred Alternative (see ROD Appendix C).

VI. Rationale for Decision

As expressed above, the guiding principles for this decision emanate from various Congressional mandates as well as the federal government's trust responsibility to the Hoopa Valley and Yurok Indian Tribes. From the inception of the TRD, Congress directed this Department to ensure the preservation and continued propagation of the Trinity River's fishery resources and to divert to the Central Valley only those waters surplus to the needs of the Trinity Basin. With the drastic declines in anadromous fish and associated habitats following the TRD's construction and operations, Congress subsequently passed a series of legislative initiatives directing the Department to determine and implement flows and other measures necessary to restore and maintain these populations to levels which existed prior to the TRD's inception.

These statutory restoration and preservation directives also comport with the Department's trust responsibility to the Hoopa Valley and Yurok Tribes. These Tribes have federally recognized fishing rights which require sufficient water to make their fishing rights meaningful. The Department has a trust obligation not only to protect these trust assets but also to make them productive. Thus, the Department must manage these assets for the benefit of the Tribes so that they can enjoy a meaningful fishery—for ceremonial, subsistence, and commercial purposes. Because of the depressed fishery conditions subsequent to the TRD, however, the Tribes have been increasingly restricted from the enjoyment of their trust resources.

In light of these obligations, the Service, with vital support from the Hoopa Valley Tribe, conducted an extensive scientific effort to determine the appropriate flows and other measures necessary to restore and maintain the Trinity River's anadromous fishery. In section 3406(b)(23) of the CVPIA, Congress sought the final resolution of these issues in order to meet the federal trust responsibility and to meet the goals of prior legislation, calling for the completion of the scientific efforts initiated by Secretary Andrus and for the implementation of recommendations, based on the best available scientific information, regarding permanent instream fishery flow requirements and TRD operating criteria and procedures necessary for the restoration and maintenance of the Trinity River anadromous fishery. These statutory and trust responsibilities form the basis for the FEIS/EIR's purpose and need for this action—to restore and maintain the natural production of anadromous fish below the TRD.

All alternatives and issues raised during the environmental review process were fully considered and analyzed in making the decision set forth in this ROD. This ROD adopts the analysis contained in the FEIS/EIR and selects the Preferred Alternative as the necessary and appropriate action which best meets the statutory and trust obligations of the Department to restore and maintain the Trinity River's anadromous fishery resources. The following text summarizes the rationale for choosing this alternative and the critical issues considered in making this decision.

The best available scientific information indicates that restoring the attributes associated with a healthy alluvial river—such as alternative bar sequences, effective sediment transport, and dynamic riparian communities—will best achieve the restoration and maintenance of anadromous fish populations in the Trinity River. Restoring these geomorphic attributes will restore the diverse habitats that salmon and steelhead need to survive and successfully reproduce.

This will in turn lead to healthier and more sustainable salmonid populations (and other species) in the Trinity River Basin.

Based on the information and analysis in the FEIS/EIR, full implementation of the Preferred Alternative is necessary to restore the diverse fish habitats in the Trinity River below Lewiston Dam. Improved habitat conditions will in turn benefit rearing and juvenile life stages and improve juvenile emigration throughout the Trinity system and will also benefit anadromous species in the lower Klamath River Basin by providing increased juvenile outmigration flows and lower water temperature. These improved habitat conditions are expected to result in greater production and substantial increases in anadromous fish populations. Spawner escapement estimates for chinook and coho salmon and steelhead range from 64-74 percent of the Trinity River Restoration Program (TRRP) goals following implementation of the Preferred Alternative--approximately eight times greater than the estimate for the No Action Alternative. These increases in fish numbers are expected to ultimately result in self-sustaining anadromous fish populations in the Trinity River, providing a meaningful, viable fishery for the Hoopa Valley and Yurok Tribes as well as non-Indian fishing interests along the North Coast. For these reasons and others noted elsewhere, the Preferred Alternative represents the appropriate action necessary to restore and maintain the Trinity River's anadromous fishery in accordance with the Department's statutory and trust responsibilities.

In addition to the statutory and trust obligations imposed on the Department regarding the restoration of the Trinity River's fishery, the FEIS/EIR considered several additional factors critical in making this decision, including: compliance with the Endangered Species Act; continued TRD integration for CVP consumptive water use and power generation; socio-economic impacts; impacts to other wildlife; flood control; and additional statutory and other considerations.

ESA: Section 7(a) of the Endangered Species Act places an affirmative obligation on federal agencies to take actions that conserve endangered or threatened species, in addition to the general prohibition on federal activities which would jeopardize the continued existence of listed species or would destroy or adversely modify those species' critical habitats. When federal agencies propose actions which may affect a listed species, agencies must consult with either the Service or the NMFS to ensure that the proposed action will comply with the mandates of the ESA. Consistent with these responsibilities, Reclamation and the Service formally consulted with the appropriate agencies on the potential effects of implementing the Preferred Alternative to threatened and endangered fish and wildlife species in the Trinity River basin and the Sacramento River/Delta system in the Central Valley.

The Service's Biological Opinion concluded that implementation of the Preferred Alternative is not likely to jeopardize threatened delta smelt and threatened Sacramento splittail or adversely modify critical habitat for delta smelt. The Service also has concurred with the determination that implementing the Preferred Alternative will not likely adversely affect the bald eagle and northern spotted owl. Incidental take associated with implementation of the Preferred

Alternative of the threatened delta smelt and Sacramento splittail may be affected in a manner or extent not analyzed in the March 6, 1995 Biological Opinion on the Long-term Operation of the CVP and SWP; however, a reasonable and prudent measure to minimize the effects of incidental take due to implementation of the Preferred Alternative was developed. Implementation of this measure is non-discretionary.

The NMFS Biological Opinion finds that implementation of the Preferred Alternative is not likely to jeopardize Southern Oregon/Northern California coast (SONCC) coho salmon in the Trinity River, Sacramento River winter-run chinook salmon, Central Valley spring-run chinook salmon, or Central Valley steelhead. The NMFS has also determined that implementation of the Preferred Alternative, as proposed, is not likely to destroy or adversely modify designated critical habitat for these species.

The NMFS does anticipate that SONCC coho salmon habitat adjacent to and downstream of the channel rehabilitation projects associated with the Preferred Alternative may be temporarily degraded during construction. Construction of these projects, which will create a substantial amount of additional suitable habitat, may temporarily displace an unknown number of juvenile coho salmon but is not expected to result in an unauthorized take.

Because implementation of the proposed action is expected to result in substantial increases in coho salmon populations, implementation of the Preferred Alternative is not expected to appreciably reduce the likelihood of both survival and recovery of SONCC coho salmon in the wild. Similarly, because the expected outcome of implementation of the proposed action is greatly improved fish habitat conditions (including necessary coho salmon habitat), the value of critical habitat for both the survival and recovery of SONCC coho salmon will not be appreciably diminished.

The NMFS does not anticipate that the implementation of the proposed action will result in incidental take of Central Valley spring-run chinook or Central Valley steelhead, but does anticipate the Preferred Alternative will result in a minute increase in the level of Sacramento River winter-run chinook incidentally taken due to elevated water temperature in all years except critically dry years. In critically dry years, Reclamation would be required to reinitiate consultation pursuant to the existing Winter-run CVP-OCAP to develop year-specific temperature control plans. Implementation of reasonable and prudent measures specified in the NMFS BO to minimize the effects of incidental take are non-discretionary and will result in minimizing impacts of incidental take of SONCC coho salmon and Sacramento River winter-run chinook salmon in all years including critically dry years.

As described above, implementing the Preferred Alternative also will entail the development of more specific plans to implement non-flow related recommendations. These project proposals will serve as biological assessments for the proposed actions, providing necessary details about the actions and their impacts on affected listed and candidate species. Project-specific biological opinions will take into account the environmental benefits that accrue from the fishery restoration

program. As a result, the Service and NMFS anticipate that implementation of the overall fishery restoration program will streamline the ESA compliance process and, as actions are taken that benefit listed species, will ultimately reduce and, upon recovery of the listed species, eliminate the need for additional ESA compliance requirements.

TRD integration with CVP: The Preferred Alternative provides for the continued operation of the Trinity River Division of the CVP, including the continued export to the Central Valley of a majority of the waters flowing into the TRD (averaging 52%) and the continued generation of power. The Preferred Alternative, however, also conforms to the legal and trust mandates for the restoration and protection of the Trinity fishery which restrict the amount of water authorized for exportation to the Central Valley.

Since full operation of the TRD began in 1964, an average of 74% of the basin's inflow to the TRD (about 988,000 af) has been exported annually. In some years, approximately 90% of the annual inflow was diverted to the Sacramento basin. In recent years (1985-1997), annual exports have decreased to an average of 732,400 af; under the No Action alternative they were assumed to average 870,000 af. Currently, releases to the Trinity River are not less than 340,000 af annually. Under the Preferred Alternative, the TRD would be operated to release additional water to the Trinity River, and the timing of exports to the Central Valley would be shifted to later in the summer to help meet Trinity River instream temperature requirements. The Preferred Alternative would, on average, increase releases to the Trinity River by 75% above No Action levels. Long-term average water exports to the Central Valley would be 630,000 acre feet, or a reduction compared to the No Action alternative of approximately 240,000 acre feet (28 percent). Dry-period annual exports would be reduced by 160,000 acre feet (30 percent) compared to average dry period exports under the No Action alternative (see Table 3-3 in the DEIS).

Analyses conducted for the FEIS/EIR indicate that compared to the No Action alternative long-term average annual CVP deliveries may decrease by approximately 90,000 acre feet (2 percent), with reductions during the dry period projected to average 160,000 acre feet (4 percent). Annual Delta exports through the Tracy Pumping Plant were modeled to be reduced by 60,000 acre feet (2 percent) over the long-term average and 90,000 acre feet (4 percent) during the dry period. The reduction in available surface water supplies is anticipated to result in increased pumping of groundwater in areas where such pumping is economically viable given land use, crop mix, and groundwater quality. In some areas, the FEIS/EIR anticipated that water users may choose to pump additional groundwater in areas that are in an existing/projected area of overdraft; such additional pumping would be expected to result in localized groundwater elevation declines and land subsidence compared to the No Action alternative. In some areas where additional groundwater pumping is not assumed to be feasible, either because of economic considerations or ordinances which limit additional groundwater extraction, some lands may be fallowed at least on a temporary basis.

Although not the basis for this decision, improvements in water supply reliability to the Central Valley and in particular to south-of-Delta agricultural interests are being addressed in a separate

forum. On August 28, 2000, 18 Federal and State of California agencies, including the Department of the Interior, issued a Record of Decision for implementation of the CALFED Program. The CALFED Program was established to develop a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta) system. One of the goals of the CALFED Program is to improve the water supply reliability for the State of California's farms and growing cities that draw water from the Delta and its tributaries, including 7 million acres of highly productive farmland.

As part of the CALFED Record of Decision, the CALFED agencies anticipated that implementation of a variety of water management tools called for in the CALFED Program "will result in normal years in an increase to CVP south-of-Delta agricultural water service contractors of 15 percent (or greater) of existing contract totals to 65 to 70 percent." (CALFED ROD at 41). In the course of developing these target water allocations, and consistent with language contained in House Report 106-253, on the Energy and Water Appropriations Bill – Federal Fiscal Year 2000, certain CALFED agencies considered the potential that the Trinity River decision may affect CVP allocation as part of the CALFED Process, and concluded that it will not affect these targeted allocations to CVP south-of-Delta agricultural water service contracts. Ibid.

Implementation of the Preferred Alternative will have some impacts to power generation. The Preferred Alternative minimizes effects to CVP power generation to the extent practicable, while allowing for both fisheries restoration within the mainstem of the Trinity River and meeting Tribal Trust obligations. The total installed CVP capacity of approximately 2000 megawatts equates to four percent of California demand in 1999 and three percent of projected 2010 demand. The Trinity River Division (TRD) accounts for 25 percent of the total CVP installed capacity (approximately 497 megawatts is generated by the TRD), which equates to approximately one percent of current California demand, and less than one percent of projected 2010 demand. Upon full implementation of the Preferred Alternative, average annual CVP power generation would be reduced in the Trinity River Division, would be slightly reduced in the Shasta Division, and would remain approximately the same at Folsom, Nimbus and San Luis Powerplants. The Trinity River FEIS/EIR(using modeling results produced in cooperation with WAPA – see FEIS/EIR page 2-123, Table 3-49) identifies an average potential decrease in capacity of seven MW (compared to the average capacity of 1603 MW under No Action; a percentage change of less than four tenths of one percent of the total power capacity associated with the CVP) attributable to the Preferred Alternative.[1] Modeling simulations in the FEIS/EIR also indicate that the Preferred Alternative would reduce the average long-term energy production of the CVP by 318 GWh, approximately 6 percent, which equates to a reduction in the statewide electrical energy supply of approximately one tenth of one percent as a result of implementing the Preferred Alternative.

[1]In certain rare circumstances, this decrease may be as high as 85 MW as a result of potential bypass operations, as discussed below.

Within the larger context of demand for electricity in the State of California, the reduced generating capacity associated with implementation of the Preferred Alternative is minimal when compared to the new generating capacity either under construction or fully approved for construction within the state. As of November 2000, according to the Western Systems Coordinating Council, approximately 3,700 megawatts (which represents more than the total generation capability of the entire CVP) of new powerplants, in the form of six individual projects, are either under construction or have gained full regulatory approval in California. An additional approximate 7,500 megawatts of new powerplants have applications under review, and a further 2,000 megawatts of new powerplants have recently initiated the application process. As additional plants come on line, the CVP's total contribution as a percentage of California's overall demand for electricity will decrease.

The Preferred Alternative includes peak releases of 11,000 cfs in extremely wet years and 8,500 cfs in wet years. Full implementation of the Preferred Alternative will be delayed due to the need to replace bridges and make other infrastructure modifications, which currently limit flows to no greater than 6,000 cfs. This is expected to take at least two years, thus allowing time for additional capacity to come on line before the Preferred Alternative can be fully implemented. Until infrastructure modifications can be implemented to increase the capacity of the channel, additional water may be available for power generation in wet and extremely wet years. Rainfall and run-off to support increased reservoir levels and power generation would typically be greater throughout the CVP system in such above-normal precipitation years.

Additionally, operating criteria will be established to allow WAPA to respond to any emergency situations in accordance with their obligations to the North American Electric Reliability Council, including exceptions for responding to various emergency situations consistent with Presidential Memorandum dated August 3, 2000, directing federal agencies to work with California to develop procedures governing the use of backup power generation in power shortage emergencies. These operational criteria are similar to those currently in place at Glen Canyon Dam that were implemented earlier this year.

The analysis contained in the FEIS/EIR shows that the net decrease in the value of CVP power production is estimated to be $5,564,000[2] annually under the Preferred Alternative when compared to the No Action alternative, a 3 percent decrease. When compared to modeled existing conditions, the net decrease in the value of CVP power production was estimated to be approximately $9,029,000 annually. The difference in the value of reduced power generation between the No Action and Existing Conditions, when compared to the Preferred Alternative, is mostly attributed to increased efficiency in deliveries to preference power customers, assumed to occur in the No Action alternative as a result of not renewing Contract 2948-A with PG&E in

[2]Output from the CVP is predominately peaking in nature, since the system is energy constrained during adverse water conditions. Generating capacity from the CVP was valued based on the assumption that any change in the CVP's capacity would be offset by the construction of replacement generating capacity of a similar nature such as a combined-cycle combustion turbine.

2004. The other source of this difference is attributable to changes in delivery schedules of CVP water under the No Action alternative when compared to both Existing Conditions and the Preferred Alternative. High allocation customers would be subject to increases of $1.25 per megawatt-hour in average power cost, or $0.00125 per kilowatt-hour at the retail level. Average customers would likely see increases of $0.21 per megawatt-hour, or $0.00021 per kilowatt-hour at the retail level, as compared to the No Action alternative. Costs to the average customer are estimated at $0.33 per megawatt-hour or $0.00033 per kilowatt-hour, and $3.90 per megawatt-hour or $0.0039 per kilowatt-hour for preference customers when comparing the Preferred Alternative to Existing Conditions.

Historically, Reclamation has occasionally made low level releases at Trinity Dam to assist in meeting downstream water temperature requirements during particularly dry years. During such releases, all of the water that would normally pass through the power turbines is bypassed, and the generators are shut down. Such bypasses have been implemented when storage has dropped below a range of from 750,000 to 1,000,000 af, depending on specific conditions, and have occurred in the July through October time frame. In modeling such bypass releases, the analysis was conducted on a "worst case" basis. Modeling of the Preferred Alternative indicates that in the 69 year period of record, bypass operations could have occurred in up to 26 months, during the July through October period, generally in critically dry years. Bypass operations could eliminate an average of 85 MW of firm load carrying capacity in any month that bypass operations occur for the July through October period. Applying the replacement capacity value used in the analysis of costs in the EIS/EIR, the net impact associated with the loss of this capacity would be approximately $3,200,000 for the four month period. This additional cost, above existing costs related to implementing the Preferred Alternative, would be incurred in any year with the potential for bypass operations, because such potential eliminates the reliable use of the Trinity Power plant during the four month period. In contrast, modeling of the No-Action and Existing Conditions indicates that in the 69 year period of record, bypass operations could have occurred in up to 38 months, more often than the Preferred Alternative.

In addition, Trinity Public Utilities District power costs could increase as much as $107,000 annually. These increased costs could result in minor cost increases to individual power users. However, Congress recently passed legislation which may offset any potential increased costs to Trinity Public Utilities District by providing $540,000 annually to the Trinity Public Utilities District. Energy and Water Appropriations Act – FY 2001.

It is important to note that the power costs discussed above may be greater (or less) than the costs identified in the NEPA documentation given different assumptions, which are in part driven by the continued uncertainty related to market deregulation and natural gas price fluctuations, but the relative impacts between the alternatives analyzed remain unchanged.

Socio-economic impacts: The Preferred Alternative is intended to minimize adverse economic and social effects across the Trinity River Basin, Lower Klamath River Basin and the Central Valley Basin. The Trinity/Shasta regional economy would be positively affected by increases in

spending associated with increases in water-oriented recreation. Socio-economic benefits also occur from the Mendocino Coastal Area northwards, specifically job growth in the commercial fishing and seafood processing sectors. In contrast, the San Francisco Coastal Area, Sacramento Valley, San Joaquin Valley and Tulare Basin showed adverse economic and employment effects as a result of reduced water deliveries to agricultural contractors. The economic sectors most impacted would be miscellaneous retail, retail and wholesale trade, farm machinery and equipment, and cotton production. As discussed above, implementation of the Preferred Alternative is estimated to reduce CVP power generation by approximately 6 percent, resulting in an increase in power costs to CVP power customers.

Impacts to Other Wildlife: Other beneficial impacts to vegetation and wildlife include significant restoration of pre-dam riparian conditions along the Trinity River, increases in suitable habitat for the foothill yellow-legged frog, western pond turtle and the willow flycatcher, and long-term increases in wetland acreage. However, ground disturbing activities and construction of channel rehabilitation sites may result in loss of vegetation, special-status plant populations, or federal and state listed species. Therefore, site specific environmental reviews will be conducted prior to ground disturbance or construction. If special-status plant populations or federal and state listed species are present, actions shall be taken to avoid effects (*e.g.*, delay construction until after riparian nesting species fledge). In addition, there would be no significant impacts to riparian vegetation, wildlife, and wetlands anticipated in the Lower Klamath River Basin/Coastal Area.

Infrastructure Impacts: Peak releases associated with the Preferred Alternative would increase from 2,000 to 11,000 cfs in May in extremely wet years, on average one out of every eight years. These flows would result in several developed and undeveloped properties being impacted as well as necessitate the replacement of four bridges (Bucktail Bridge, Poker Bar Bridge, Salt Flat Bridge, and Treadwell Bridge). Appropriate infrastructure modifications will be completed to avoid or address any anticipated impacts to property prior to increasing peak flows in wet and extremely wet years, as detailed above.

Additional Statutory and Other Considerations: Implementation of the Preferred Alternative will also comply with all additional pertinent federal and state laws, including the Fish and Wildlife Coordination Act (FWCA), the National Historic Preservation Act (NHPA), the Wild and Scenic Rivers Act, and the Environmental Justice Executive Order 12898. Site-specific environmental reviews and permitting will be conducted and obtained as necessary.

Other Alternatives Considered in the FEIS/EIR: The other alternatives either fail to achieve the restoration and maintenance goals required by the Department's statutory and trust obligations or have other considerations that weigh against their selection. Analyses conducted for the TRFES and the FEIS/EIR as well as recent history provide substantial evidence that the No Action and State Permit alternatives do not meet the purpose and need for this action. Instead, these alternatives would perpetuate and even exacerbate the degradation of available fish habitats to the continued detriment of the Trinity River and its fish stocks.

The analyses also show that the Percent Inflow and Mechanical Restoration alternatives lack the ability to restore and maintain Trinity River anadromous salmonids successfully. Although these alternatives offer marginal benefits for fishery restoration, each fails to address adequately the mechanisms which led to the current plight, *i.e.*, the geomorphic impacts to the riverine environment resulting from severely reduced and relatively static flows from the TRD. The Mechanical Restoration alternative would continue the present minimum flow of 340,000 af from the TRD, a figure which represents the third-lowest flow on record prior to the TRD, and rely on constructing certain channel rehabilitation projects (also included in the Preferred Alternative and the Percent Inflow alternative) and maintaining these sites mechanically (*e.g.*, with heavy machinery). Not only have these essentially static and severely reduced flows proven harmful to the Trinity fishery to date, but reliance on perpetual mechanical restoration efforts would also prove harmful through the continuing physical disturbance of the riverine environment. Conversely, the Preferred Alternative would maintain these improved habitats more naturally through the managed, variable flow regime, which would flush the fine sediments which clog spawning gravels and prevent future riparian encroachment. The Percent Inflow alternative does offer a varied flow regime from the TRD based on the basin's annual hydrology, but this more limited annual flow for Trinity needs (40% of inflow above Lewiston) greatly hinders the ability to prevent continued degradation of the environment in the majority of water years. This likely result is particularly true for dry and critically dry water years—40 percent of the time--in which only 325,000 af or 165,000 af, respectively, would be released to the Trinity River. Thus, neither of these alternatives provides the tools necessary to meet the Department's statutory and trust obligations or to protect and ultimately recover ESA-listed species.

Although the Maximum Flow Alternative scored better than the Preferred Alternative in terms of estimated population increases, the Maximum Flow Alternative would exclude or excessively limit the Department's ability to address the other recognized purposes of the TRD, including water diversions to the CVP and power production in the Trinity Basin. The best available science presently indicates that the Department's statutory and trust obligations can be achieved while still meeting Congressional intent to have the TRD integrated with the CVP to the extent that diversions to the CVP do not impair in-basin needs.

For all of these considerations, particularly the Department's statutory and trust obligations, implementing the Preferred Alternative represents the necessary and appropriate action in order to restore and maintain the Trinity River's anadromous fishery. As expressed above, the statutory directives and trust responsibility require the restoration of a meaningful, viable fishery from which the Hoopa Valley and Yurok Tribes can exercise their federally reserved fishing rights and the non-Indian commercial and sport fishers can also share in the benefits of these efforts. Based on the best available scientific information, this alternative meets these statutory and trust obligations, providing the best means to achieve the restoration objectives while continuing to operate the TRD as an integrated component of the CVP. This alternative is considered to be the environmentally preferable alternative in that this alternative causes the least damage to the biological and physical environment and best protects, preserves, and enhances historic, cultural, and natural resources. Further, by selecting this alternative for implementation

with its associated monitoring and mitigation measures, all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted.

VII. Tribal Concurrence

In accordance with CPVIA Section 3406(b)(23)(B), this decision and the underlying recommendations were reviewed with the Hoopa Valley Tribe through the Tribal Chairman and the Tribal Council. By Tribal Resolution # 00-94 dated December 18, 2000, the Hoopa Valley Tribe formally concurred in and agreed with the underlying recommendations and this decision.

Duane Sherman, Sr. Chairman
Hoopa Valley Tribal Council

12/19/00
Date

VIII. Secretarial Directive

The Department's agencies are directed to implement this decision as outlined in this Record of Decision, and described in detail in the FEIS/EIR.

Bruce Babbitt
Secretary of the Interior

December 19, 2000
Date

Appendix A: Public Involvement and Responses to comments on the FEIS/EIR
Appendix B: Lewiston Dam Releases to the Trinity River
Appendix C. Measures to Minimize and Mitigate Impacts Associated with Implementation of the Preferred Alternative
Appendix D. Hoopa Valley Tribal Resolution # 00-94

References

Hoopa Valley Tribal Resolution, 2000.

Moffett, J.W. and S.H. Smith. 1950. Biological Investigations of the Fishery Resources of Trinity River, California. Special Scientific Report No. 12. US Fish and Wildlife Service. 71pp

National Marine Fisheries Service. 2000. Biological Opinion for the Trinity River Mainstem Fishery Restoration EIS and its effects on Southern Oregon/Northern California Coast Coho Salmon, Sacramento River Winter-run Chinook Salmon, Central Valley Spring-run Chinook Salmon, and Central Valley Steelhead. October 12, 2000, 55pp.

Snyder, J. O. 1931. "Salmon of the Klamath River, California." *Fish Bulletin* No. 34. California Department of Fish and Game.

U.S. Department of the Interior, Memorandum from the Solicitor to Assistant Secretary – Land and Water Resources, *Proposed Contract with Grasslands Water District*. December 7, 1979.

U.S. Department of the Interior, Secretarial Issue Document, Trinity River Fishery Mitigation, January 1981.

U.S. Department of the Interior, Secretarial Decision, May 1991.

U.S. Department of the Interior, Memorandum from Solicitor to Secretary, Fishing Rights of the Yurok and Hoopa Valley Tribes, M-36979, Oct. 4, 1993.

U.S. Department of the Interior. 2000. CALFED Bay-Delta Program Programmatic Record of Decision. August 28, 2000, 1199pp.

U.S. House of Representatives. 1955. 84th Congress, 16 May, H. Rept. 602.

U.S. Fish and Wildlife Service and California Department of Fish and Game. 1956. "A Plan for the Protection of Fish and Wildlife Resources Affected by the Trinity River Division, Central Valley Project." 76 pp.

U.S. Fish and Wildlife Service and Hoopa Valley Tribe. 1999. Trinity River Flow Evaluation Final Report. June 1999, 513pp.

U.S. Fish and Wildlife Service. 1980. Environmental Impact Statement on the Management of River Flows to Mitigate the Loss of the Anadromous Fishery of the Trinity River, California. Volumes I and II. U.S. Fish and Wildlife Service, Division of Ecological Services. Sacramento, CA.

U.S. Fish and Wildlife Service, U.S. Bureau of Reclamation. 2000. Biological Assessment For Those Actions In The Preferred Alternative Of The Proposed Preferred Trinity River Mainstem Fishery Restoration Program That May Effect Listed Species And Their Critical Habitat. June, 2000. 36pp.

U.S. Fish and Wildlife Service. 2000a. Reinitiation of Formal Consultation on the Effects of Long-term Operation of the Central Valley Project and State Water Project as Modified by Implementing the Preferred Alternative in the Draft Environmental Impact Statement/Environmental Impact Report for the Trinity River Mainstem Fishery Restoration Program. Also, a request for Consultation on the Implementation of this Alternative on the Threatened Northern Spotted Owl, Northern Spotted Owl Critical Habitat, and the Endangered Bald Eagle within the Trinity River Basin and where applicable, Central Valley reservoirs. October 12, 2000. 39pp.

U.S. Fish and Wildlife Service. 2000b. Final Environmental Impact Statement/Environmental Impact Report for the Trinity River Fishery Restoration. October 2000.

Appendix A. Public Involvement and Responses to comments on the FEIS/EIR.

I. Public Involvement

The EIS/EIR was undertaken to evaluate and disclose the potential environmental benefits and adverse impacts resulting from proposed actions to restore the fishery. The DEIS/EIR was prepared with the support of the Hoopa, Karuk, and Yurok Tribes and thirteen local, state and federal agencies (either cooperating, responsible, or trustee agencies). The effort to collect, analyze and present technical information was further complemented by six technical teams lead by representatives of the Service, Reclamation, Western Area Power Administration (Western), U.S. Army Corps of Engineers (Corps), and the Bureau of Land Management (BLM).

The Service, as the designated lead agency under NEPA, began the public process on October 12, 1994 when it published a Notice of Intent (NOI) to prepare an EIS in the Federal Register (59 FR 25141). Shortly thereafter, Trinity County, the responsible CEQA agency, followed this action by forwarding a Notice of Preparation (NOP) of an EIR to the State Clearinghouse on November 16, 1994.

Soon after the publication of the NOI, a series of joint NEPA/CEQA scoping meetings were held in Willows, Weaverville, Hoopa and Eureka, California between October 27, 1994 and November 3, 1994. Public input received during the meetings and subsequent follow-up letters helped the agencies identify potential environmental impacts and areas of concern. These concerns included: fishery resources, Tribal trust obligations, Central Valley Project (CVP) agricultural and municipal and industrial (M&I) water supply and reliability, vegetation and wildlife resources, water quality and inriver temperature, water management, CVP power generation recreation and recreation economics, socioeconomics, land use, Trinity River flooding, aesthetics (related to reservoir drawdown), ocean sport and commercial fishing, and upland watershed rehabilitation.

As the DEIS/EIR was being prepared, additional public meetings were held between March 25 and April 4, 1996 in Orleans, Eureka, Hoopa, Weaverville, Willows, Fresno, Sausalito, California and Coos Bay, Oregon. This series of meetings provided the public with additional opportunities for comment and included a discussion of preliminary TRFES recommendations, EIS/EIR alternatives, impact areas and analytical methods. In addition, the meetings provided updates on the project schedule and recent legislative actions.

A second round of public meetings were held on October 28, 29 and 30, 1997, at Hoopa, Weaverville, California and Sacramento, California respectively, to provide an update on the alternatives and information on preliminary analysis results. In addition, a public workshop was held in Weaverville on February 17, 1998, to present information on proposed significance criteria that had been developed to help in identifying the significance of the various impacts.

A series of newsletters mailed out to a large number of interested parties in January 1996, September 1996, and October 1997 provided additional information. Distribution of news and information concerning the DEIS/EIR was supplemented in the fall of 1998 when the Service posted an Internet web page at http://www.ccfwo.r1.Service.gov/ccfwo/treis.htm. Trinity County also provided electronic access to information concerning Trinity River activities by maintaining a public list server known as "env-trinity" available through subscription to majordomo@igc.apc.org.

On October 19, 1999, the Service published a notice in the Federal Register announcing the availability of the draft EIS/EIR and the commencement of the public comment period in the Federal Register (64 FR 56364). In addition, news releases and articles announcing the availability of the DEIS/EIR were published in several area newspapers including the Trinity Journal, Sacramento Bee, San Francisco Chronicle, Eureka Times-Standard and the San Jose Mercury News. The document was made available for public review at libraries and other public places in California and in Coos Bay, Oregon and Portland, Oregon. In addition, 692 hard copies of the document along with 408 copies of the Executive Summary and 204 electronic versions of the DEIS/EIR on CD-ROM were distributed to interested individuals, organizations and agencies. A complete series of technical appendices were also included as part of the CD ROM and hard copy versions of the appendices were also made available to the public and interested agencies on request.

The public comment period included a series of joint NEPA/CEQA public hearings held in Redding, Sacramento, and Eureka on November 16, 18, and 23, 1999, respectively. In addition, the Trinity County Board of Supervisors held a CEQA hearing in Weaverville, California. These meetings provided the public with an opportunity to submit both written and oral comment to the lead agencies. The comment period was originally scheduled to end on December 8, 1999. However, on December 2, 1999 the Service extended the comment period until December 20, 1999 (64 FR 67584). Public meetings were again held in Sacramento, California on December 6, 1999 and in Weaverville, California on December 7, 1999. On December 27, 1999 the Service published a notice in the Federal Register which reopened the public comment period until January 20, 2000 (64 FR 72357). Public notices regarding the hearings and extensions were also published in the aforementioned newspapers and the Redding Record Searchlight.

In response to the public outreach effort, the lead agencies received a substantial number of letters and postcards commenting on the DEIS/EIR. In total, the lead agencies received written comments from 6445 people and organizations (1009 letters and 5436 preprinted postcards). A list of the commentors and the response of the agencies to each of those comments was presented in the FEIS/EIR. On November 17, 2000 the Service announced the availability of the Final EIS/EIR (65 FR 69512).

II. Responses to Comments on the FEIS/EIR

Several hundred letters were received after publication of the FEIS pertaining to individuals' preference for alternative implementation, implementation funding, and Executive Order 12898. No information

was received that would alter the conclusions contained in the FEIS/EIR or in the Service's and NMFS's biological opinions. Additional responses are provided below on the issues raised for clarification purposes.

Issue: Alternatives for Implementation

The Department received 423 letters requesting the Secretary implement the Maximum Flow Alternative or if the Preferred Alternative is selected and funds not appropriated for implementation, provide in the Record of Decision for an increase in flows to those of the Maximum Flow regime. The Department also received 123 additional letters supporting only the Maximum Flow Alternative, and 25 letters supporting increase flows, but not specifying how much of an increase.

The Department also received 43 letters supporting the Preferred Alternative but only in its current form without modification expressing the sentiment that by agreeing to export 53% of the water from the Trinity River to the Central Valley, a compromise has been struck.

Several of the letters mentioned the need to appropriate funding so increased flows and implementation could occur. Several also mentioned the Trinity Management Council, and that it should be lead by someone who is unaffiliated with Northern California water issues, and who would be highly respected by the environmental conservation community.

The Department received two letters opposing implementation of the Preferred Alternative. The letters assert that the Department's analysis was biased in certain respects and failed to adequately consider a number of issues, including the Sacramento Municipal Utility District's proposed alternative, impacts to species listed under the ESA, lost power generation and acquisition of replacement power supplies, and that circumstances surrounding California's deregulated energy market necessitate preparation of a supplemental EIS/recirculation of EIR.

Response: Individuals' preferences for the Maximum Flow Alternative, the Preferred Alternative and the SMUD proposed alternative are duly noted and in general have been addressed previously in the FEIS. The Preferred Alternative has been adopted for implementation for the reasons stated above. It should be noted that implementing the Maximum Flows regime would also require extensive funds due to the bridges and structures that would need to be relocated along with the estimated $23 to 72 million it would take to retrofit Trinity Dam for those releases.

With regard to the comment about current electrical energy issues in California, it should be noted that implementation of the Preferred Alternative will not have any immediate impacts to power supplies in California and that, as recognized above, substantial new supplies are expected to be developed in California over the next few years. Moreover, the issues raised through the comments will not result in impacts to a significant extent not already considered in the FEIS/EIR.

As a whole, the Preferred Alternative best meets the purpose and need to restore and maintain the Trinity River fishery in accordance with the Department's statutory and trust obligations. The Preferred Alternative also presents a balanced approach that allows the continued integration of the TRD to the extent consistent with Congressional mandates and based on the best available scientific information The selection of the Preferred Alternative flows from sound scientific reasoning and thorough analysis of all of the alternatives.

Issue: Executive Order 12898

Several letters included comments pertaining to Executive Order 12898 - "...requires agencies to identify and address disproportionately high and adverse human health or environmental effects of their actions on minorities and low-income populations and communities as well as the equity of the distribution of the benefits and risks of their decisions." These letters expressed the view that the current transfer of water is a violation of law.

Response: Comments noted. This Decision directs the Preferred Alternative to be implemented which, as described in the FEIS, is consistent with Executive Order 12898.

Appendix B. Lewiston Dam Releases to the Trinity River (FEIS, pages C-37 and C-38)

Attachment 1 Lewiston Dam Releases to the Trinity River					
Date	**Extremely Wet**	**Wet**	**Normal**	**Dry**	**Critically Dry**
01-Oct thru 15-Oct	450	450	450	450	450
16-Oct thru 21-Apr	300	300	300	300	300
22-Apr	500	500	500	300	300
23-Apr	500	500	500	300	900
24-Apr	500	500	500	300	1,500
25-Apr	500	500	500	300	1,500
26-Apr	500	500	500	300	1,500
27-Apr	500	500	500	900	1,500
28-Apr	500	500	500	1,500	1,500
29-Apr	1,500	2,000	2,000	2,500	1,500
30-Apr	1,500	2,000	2,500	3,500	1,500
01-May thru 05-May	1,500	2,000	2,500	4,500	1,500
06-May	2,000	2,500	4,000	4,306	1,500
07-May	2,000	2,500	6,000	4,121	1,500
08-May	2,000	2,500	6,000	3,943	1,500
09-May	2,000	2,500	6,000	3,773	1,500
10-May	2,000	2,500	6,000	3,611	1,500
11-May	2,000	2,500	6,000	3,455	1,500
12-May	2,000	2,500	5,784	3,307	1,500
13-May	2,000	2,500	5,574	3,164	1,500
14-May	2,000	3,000	5,373	3,028	1,500
15-May	2,000	1,000	5,178	2,897	1,500
16-May	2,000	6,000	4,991	2,773	1,500
17-May	2,000	8,500[a]	4,811	2,653	1,500
18-May	2,000	8,500[a]	4,637	2,539	1,500

19-May	2,000	8,500[a]	4,469	2,430	1,500
20-May	3,000	8,500[a]	4,307	2,325	1,500
Date	**Extremely Wet**	**Wet**	**Normal**	**Dry**	**Critically Dry**
21-May	4,000	8,500[a]	4,151	2,225	1,500
22-May	6,000	7,666[a]	4,001	2,129	1,500
23-May	8,500[a]	6,833[a]	3,857	2,037	1,500
24-May	11,000[a]	6,000	3,717	1,950	1,500
25-May	11,000[a]	6,000	3,583	1,866	1,500
26-May	11,000[a]	6,000	3,453	1,785	1,500
27-May	11,000[a]	6,000	3,328	1,708	1,500
28-May	11,000[a]	6,000	3,208	1,635	1,500
29-May	10,444[a]	5,690	3,092	1,564	1,500
30-May	9,889[a]	5,322	2,980	1,497	1,497
31-May	9,333[a]	4,977	2,872	1,433	1,433
01-Jun	8,778[a]	4,655	2,768	1,371	1,371
02-Jun	8,222[a]	4,354	2,668	1,312	1,312
03-Jun	7,667[a]	4,072	2,572	1,255	1,255
04-Jun	7,111[a]	3,809	2,479	1,201	1,201
05-Jun	6,556[a]	3,562	2,389	1,150	1,150
06-Jun	6,000	3,332	2,303	1,100	1,100
07-Jun	6,000	3,116	2,219	1,053	1,053
08-Jun	6,000	2,915	2,139	1,007	1,007
09-Jun	6,000	2,726	2,062	964	964
10-Jun	6,000	2,550	2,000	922	922
11-Jun	5,664	2,385	2,000	883	883
12-Jun	5,359	2,230	2,000	845	845
13-Jun	5,071	2,086	2,000	808	808
14-Jun	4,798	2,000	2,000	774	774

15-Jun	4,540	2,000	2,000	740	740
16-Jun	4,295	2,000	2,000	708	708
17-Jun	4,064	2,000	2,000	678	678
18-Jun	3,845	2,000	2,000	649	649
Date	**Extremely Wet**	**Wet**	**Normal**	**Dry**	**Critically Dry**
19-Jun	3,638	2,000	2,000	621	621
20-Jun	3,443	2,000	2,000	594	594
21-Jun	3,257	2,000	2,000	568	568
22-Jun	3,082	2,000	2,000	544	544
23-Jun	2,916	2,000	2,000	521	521
24-Jun	2,759	2,000	2,000	498	498
25-Jun	2,611	2,000	2,000	477	477
26-Jun	2,470	2,000	2,000	450	450
27-Jun	2,337	2,000	2,000	450	450
28-Jun	2,212	2,000	2,000	450	450
29-Jun	2,093	2,000	2,000	450	450
30-Jun thru July 9	2,000	2,000	2,000	450	450
10-July	1,700	1,700	1,700	450	450
11-July	1,500	1,500	1,500	450	450
12-July	1,350	1,350	1,350	450	450
13-July	1,200	1,200	1,200	450	450
14-Jul	1,,050	1,050	1,050	450	450
15-July	950	950	950	450	450
16-July	850	850	850	450	450
17-July	750	750	750	450	450
18-July	675	675	675	450	450
19-July	600	600	600	450	450

20-July	550	550	550	450	450
21-July	500	500	500	450	450
22-July to 30-Sept	450	450	450	450	450
Acre-Feet (Thousands)	**815.2 (721.1)[b]**	**7,01.0 (671.3)[b]**	**646.9**	**452.6**	**368.6**

[a]Releases restricted to 6,000 cfs or 8,500 cfs until appropriate infrastructure improvements have occurred.

[b]Annual allocations that reflect a maximum Lewiston Dam release of 6,000 ft 3/s until floodplain improvement projects are completed.

Appendix C. Measures to Minimize and Mitigate Impacts Associated with Implementation of the Preferred Alternative

Table 1 displays the project implementation impacts/ issues and minimization and mitigation measures which Reclamation and the Service have committed to perform under this Record of Decision followed by additional explanation.

Table 1. Impacts and Preferred Alternative Mitigation Commitments

Impact/Issue	Mitigation Commitment
The channel rehabilitation projects would result in short-term Trinity River turbidity impacts. Impacts to recreation activities from turbidity associated with the construction of the channel rehabilitation sites.	A 401 water quality certification would be obtained from the NCRWQCB, and a construction procedure would be developed to meet the Basin Plan turbidity requirements. Monitoring would be conducted as specified by the NCRWQCB, and efforts would be taken to reduce levels if they are 20 percent or more over background (e.g., isolating the work area and/or slowing or halting construction until the 20-percent level is achieved). Notify individual diverters with state diversion permits within 2 miles downstream of any mechanical channel rehabilitation activity at least 2 days in advance of activities likely to produce turbidity.
Potential violations of temperature objectives and carryover storage criteria established in the Sacramento River winter run chinook salmon Biological Opinion.	Implement NMFS biological opinion Reasonable and Prudent Measures and Terms and Conditions.
Violate state temperature objectives established for the Trinity River.	Consultation with NMFS would occur pursuant to Trinity River coho salmon biological opinion. Bypassing the Trinity Power plant could offset impacts to temperature in the Trinity River by pulling colder water from lower in the reservoir.
Impacts to Delta smelt and Sacramento splittail as a result of changes in Delta inflow to export ratios.	Implement Service biological opinion Reasonable and Prudent Measures and Terms and Conditions.

Ground disturbing activities could result in a loss of vegetation and special-status plant populations.	Conduct site-specific environmental reviews prior to mechanical ground-disturbing activities. Such reviews shall, when appropriate, include surveys for federal and state endangered, threatened, and proposed species, or for other species if required by permitting agencies (e.g., USFS). If such species are present, actions shall be taken to avoid impacts. Develop and implement a revegetation plan for all ground-disturbing activities (excluding channel rehabilitation sites). Revegetation shall use plant species found adjacent to the impact area or from similar habitats, subject to landowner andor agency concurrence. Replacement ratios and monitoring plans, if determined necessary, will be developed in cooperation with the Corps, Service, and CDFG.
Direct mortality of foothill yellow-legged frogs or egg masses, adult western pond turtles and hatchlings, or willow flycatcher nests and young during construction of the channel rehabilitation sites.	Conduct site-specific environmental reviews prior to mechanical ground-disturbing activities. Such reviews shall, when appropriate, include surveys for federal and state endangered, threatened, and proposed species, or for other species if required by permitting agencies (e.g., USFS). If such species are present, actions shall be taken to avoid impacts (e.g., delay construction until after willow flycatcher chicks fledge).
The mechanical channel rehabilitation projects could impact wetland resources.	Conduct pre-construction delineation of wetland areas at sites that may contain wetlands. Consult with the Corps on potential impacts and appropriate mitigation, if any, to wetland resources.
Impacts to public safety from river flows that are too high or too low (i.e., outside the preferred range for boating).	Post signs at river access points showing daily flows. Offer a toll-free telephone number so recreationists can call to obtain daily flow information. Post daily flows on the Internet.
Increased flooding of Trinity River structures and/or residences.	Reclamation will take appropriate steps in a timely manner to ensure that affected bridges, houses, and out-buildings are structurally improved or relocated or otherwise addressed before implementing recommended peak releases for Wet or Extremely Wet water years (8,500 and 11,000 cfs, respectively).

Impacts to cultural resources.	Conduct cultural resource surveys of project areas (including areas of ancillary activities, such as staging areas, gravel mining areas, etc.) prior to ground disturbance. Areas containing cultural resources shall be demarcated and activities planned to avoid these areas. If cultural resources cannot be avoided, unavoidable impacts on significant resources would be mitigated for in a manner that is deemed appropriate. Mitigation for significant resources may include, but is not limited to, data recovery, public interpretation, performance of a Historic American Building Survey or Historic American Engineering Record, or preservation by other means.
Spawning gravel placement and other heavy equipment work associated with the alternatives would result in PM10 impacts as a result of fugitive dust.	Implement a dust control program, which includes: watering of stockpiles, roads, etc. as necessary, and identify an individual to monitor dust control and to respond to citizen complaints, if any.

In order to minimize and mitigate the effects of project implementation to listed species, the NMFS and the Service included reasonable and prudent measures and terms and conditions as part of their respective biological opinions (National Marine Fisheries Service, 2000; U.S. Fish and Wildlife Service, 2000).

The NMFS biological opinion listed the following reasonable and prudent measures as necessary and appropriate for the Service and Reclamation to implement in order to minimize impacts of incidental take of SONCC coho salmon and Sacramento River winter-run chinook salmon.

As contained in the NMFS biological opinion, the following reasonable and prudent measures are necessary and appropriate to minimize impacts of incidental take of SONCC coho salmon and Sacramento River winter-run chinook salmon.

The USFWS and Reclamation shall:

1. Implement the flow regimes included in the proposed action (as described in TRMFR DEIS, page 2-19, Table 2-5) as soon as possible;

2. Ensure that the NMFS is provided the opportunity to be represented during implementation of the Adaptive Environmental Assessment and Management Program;

3. Ensure that the replacement bridges and other infrastructure modifications, needed to fully implement the proposed flow schedule, are designed and completed as soon as possible;

4. Periodically coordinate with the NMFS during the advanced development and scheduling of the habitat rehabilitation projects described in the TRMFR DEIS;

5. Complete "the first phase of the channel rehabilitation projects" (USFWS and BOR, 2000) in a timely fashion;

6. Implement emergency consultation procedures during implementation of flood control or "safety of dams" releases from Lewiston Dam to the Trinity River;

7. In dry and critically dry water year types, Reclamation and USFWS shall work cooperatively with the upper Sacramento River Temperature Task Group to develop temperature control plans that provide for compliance with temperature objectives in both the Trinity and Sacramento rivers.

The USFWS and Reclamation must comply with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.

1.a. Following completion of the Record of Decision addressing the proposed action, Reclamation shall immediately implement the components of the proposed flow schedule (as described in the TRMFR DEIS, page 2-19, Table 2-5) equal to or less than 6,000 CFS, and implement the entire flow schedule as soon as possible (i.e., after infrastructure modifications are completed);

1.b. As necessary infrastructure modifications are made, Reclamation shall incrementally implement higher Trinity River flows (consistent with the proposed flow regime), e.g., potentially releasing up to 8,500 CFS after some bridge modifications, but prior to completion of the "Bucktail" and "Poker Bar" bridge replacements (see USFWS and BOR, [2000]);

1.c. Reclamation shall provide two reports per year detailing flows released into the Trinity River below Lewiston Dam; reports will be provided to the NMFS (1655 Heindon Road, Arcata, CA 95521) by August 31, and March 31, annually;

2.a. The USFWS and Reclamation shall provide the opportunity for full NMFS participation on the technical team ('designated team of scientists' [USFWS and BOR 2000], 'technical modeling and analysis team' [TRMFR DEIS]) offering restoration program recommendations, and on the Trinity Management Council policy group (described in the TRMFR DEIS and USFWS and BOR [2000]);

3.a. The replacement bridges and other infrastructure modifications needed to fully implement the proposed flow schedules shall be completed by the end of calendar year 2002 (consistent with the schedule outlined in USFWS and BOR [2000]);

4.a. The USFWS and/or Reclamation shall meet with the NMFS annually in March to coordinate during the advanced development and scheduling of habitat rehabilitation projects, including mainstem channel rehabilitation projects, sediment augmentation program, and dredging of sediment collection pools;

4.b. The USFWS and/or Reclamation shall provide for review of individual mainstem channel rehabilitation projects via the technical team ('designated team of scientists' [USFWS and BOR 2000], 'technical modeling and analysis team' [TRMFR DEIS]) or equivalent group, and provide a written recommendation to the NMFS whether the projects are similar to those described in the TRMFR DEIS and should be covered by this incidental take statement; if the technical team determines that these projects and their impacts to aquatic habitat are substantially different than described in the TRMFR DEIS and USFWS and BOR (2000), the technical team will recommend to the NMFS that additional ESA section 7 consultation is appropriate;

5.a. The USFWS and Reclamation shall complete the "first phase of the channel rehabilitation projects" (USFWS and BOR 2000) (i.e., '24 channel projects' [TRMFR DEIS]) within 3 years of issuance of the Record of Decision;

6.a. Reclamation shall initiate emergency consultation procedures during implementation of any flood control or "safety of dam" releases, pursuant to 50 CFR §402.05;

7.a. Be prepared to make use of the auxiliary bypass outlets on Trinity Dam as needed, and pursuant to reinitiation of ESA section 7 consultation regarding Sacramento River Winter-run chinook salmon, to protect water quality standards; associated actions may include modification of the export schedule of Trinity Basin diversions to the Sacramento River.

7.b. In years that Reclamation has reinitiated consultation pursuant to criteria established in the Winter-run chinook salmon CVP-OCAP BO, evaluate drawdowns of Trinity Reservoir below the 600 TAF minimum end-of-water year carryover level to the extent needed to avoid significant temperature-related loss of the early life stages of winter-run chinook salmon (> 10% as predicted by Reclamation's Salmon Mortality Model). Implementation of drawdowns below the 600 TAF minimum end-of-year carryover level in Trinity Reservoir shall be determined by Reclamation, USFWS, and NMFS on a case-by-case basis in dry and critically dry water years.

As contained in the Service biological opinion, the following reasonable and prudent measures are necessary and appropriate to minimize the impacts of the Preferred Alternative:

1) Reclamation shall minimize the effects of reoperating the CVP resulting from the implementation of the Preferred Alternative within the Trinity River Basin on listed fish

in the Delta.

In order to be exempt from the prohibitions of section 9 of the Act, Reclamation must ensure compliance with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.
To implement Reasonable and prudent Measure number one Reclamation must implement the following:

2) If Reclamation in its annual operations planning process detects that implementation of the Preferred Alternative will result in an upstream (eastward) movement of X2 in any month between February 1 through June 30 of 0.5 km, Reclamation shall incorporate within its operating plan measures that can and will be implemented to minimize or eliminate such upstream movements.

Since there may be some short-term impacts resulting from channel rehabilitation, watershed protection measures, and infrastructure modifications, the Trinity Management Council will guide efforts to minimize or eliminate potential impacts prior to implementation. The FWS will coordinate with the NMFS regarding surveys for threatened coho salmon presence prior to implementation of habitat rehabilitation on the Trinity River. The NMFS and FWS will coordinate work windows for these projects, as needed. Surveys for nesting northern spotted owls and bald eagles will occur in suitable habitat within a 0.5 mile radius of a project site prior to beginning work activities utilizing motorized equipment or chain saws. If a nesting owl is detected within a 0.25 mile radius, scheduled work activities will not occur from February 1 through July 9; if a nesting eagle is detected within a 0.5 mile radius, scheduled work activities will not occur from January 1 through August 31. Similar surveys will occur for watershed protection and restoration efforts in upland areas.

Measures will be taken to minimize any increased sedimentation/turbidity in the mainstem from mechanical disturbance, such as leaving a small berm at the edge of the channel to trap sediments until all other work is completed. Turbidity and other Clean Water Act standards, as identified by the Water Quality Control Plan for the North Coast Region, will be monitored and maintained. If standards are not met, construction activities will cease until such a time that operations or alternatives can be completed within compliance.

Construction of most project sites will involve removal of riparian vegetation at encroached berm areas. Construction of these channel rehabilitation sites, as presented in the FEIS, will include areas that are re-vegetated with willow, cottonwood and/or other shrub/tree species at more appropriate locations on the floodplains of the rehabilitation sites. Ultimately, natural revegetation and more proper riparian function will also occur at project sites as flow regime changes are implemented.

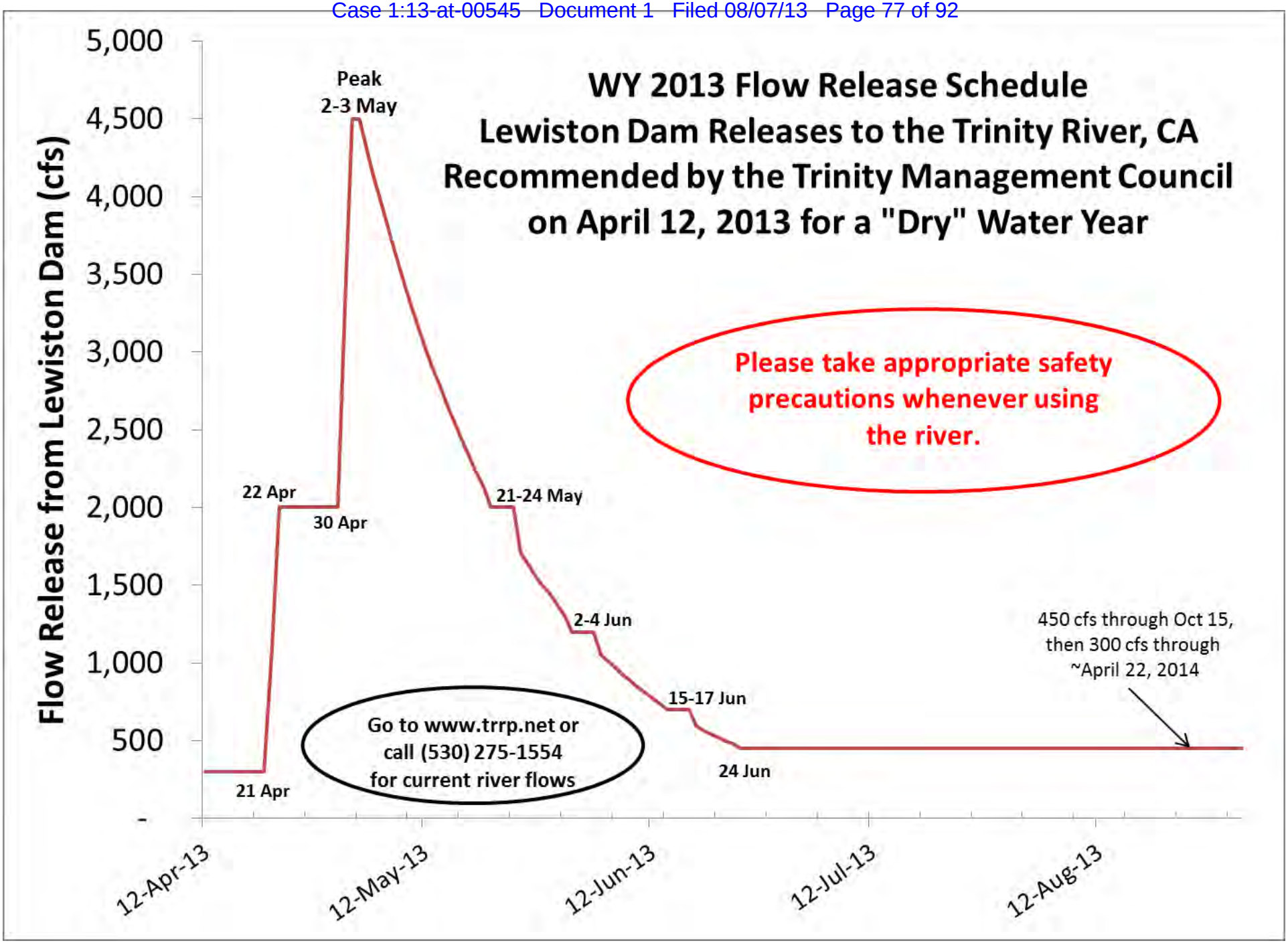
The lead agencies have executed a Programmatic Agreement (PA) under Section 106 of the National Historic Preservation Act with the Hoopa Valley Tribe, the State Historic Preservation Officer for

California, and the Advisory Council on Historic Preservation. Under the terms of the PA, efforts will be undertaken to identify historic properties that may be affected by actions to be taken under the Preferred Alternative, and measures will be identified and implemented to avoid, minimize, or mitigate potential adverse effects upon those properties.

The segment of the Trinity River between Cedar Flat and Lewiston Dam (river miles 47.5 to 111.9) is a component of the National Wild and Scenic Rivers System ("System"). This segment is administered by the National Park Service (NPS) for purposes of review under Section 7 of the Wild and Scenic Rivers Act. The primary outstanding remarkable value of this section of the Trinity River is recreational. Mitigation measures intended to address public safety from river flows that are too high or too low will be implemented as part of the Preferred Alternative. With these measures, the NPS has determined that implementation of the Preferred Alternative would not have a direct and adverse effect on the values for which the river was designated into the System. Within the larger segment administered by the NPS, are segments administered by the US Forest Service (USFS) and the US Bureau of Land Management (BLM). Both agencies determined that implementation of the Preferred Alternative, as proposed, would not result in direct and adverse effects to the river.

All other permits or other authorizations (e.g. Section 404 permits for bridge replacement) will be acquired and other environmental compliance requirements will be satisfied, as necessary, prior to initiation of any actions under the Preferred Alternative.

EXHIBIT 2


WY 2013 Flow Release Schedule
Lewiston Dam Releases to the Trinity River, CA
Recommended by the Trinity Management Council
on April 12, 2013 for a "Dry" Water Year
Flow Release from Lewiston Dam (cfs)
5,000
4,500
4,000
3,500
3,000
2,500
2,000
1,500
1,000
500
-
Peak
2-3 May
22 Apr
30 Apr
21-24 May
2-4 Jun
15-17 Jun
24 Jun
21 Apr
450 cfs through Oct 15,
then 300 cfs through
~April 22, 2014
Please take appropriate safety
precautions whenever using
the river.
Go to www.trrp.net or
call (530) 275-1554
for current river flows
12-Apr-13
12-May-13
12-Jun-13
12-Jul-13
12-Aug-13

Releases from Lewiston Dam will begin increasing on April 21, reach a 2,000 cfs bench on Aprl 22, and remain there until April 30. On April 30 the flow will increase to the peak flow of 4,500 cfs on May 2 and hold for two days, then begin decreasing on May 4 to a summer base-flow of 450 cfs by June 24.The public should take appropriate safety precautions when recreating near rivers as they are naturally hazardous at any flow. Landowners are advised to clear personal items from the floodplain prior to the releases. More information is available the Trinity River Restoration Program website: www.trrp.net.

WY2013 Restoration Release Schedule

Date	Day	River Release	Date	Day	River Release
1-Oct-12	Mon	450	31-May-13	Fri	1,300
16-Oct-12	Tue	300	1-Jun-13	Sat	1,200
21-Apr-13	Sun	1,100	2-Jun-13	Sun	1,200
22-Apr-13	Mon	2,000	5-Jun-13	Wed	1,053
1-May-13	Wed	3,300	6-Jun-13	Thur	1,007
2-May-13	Thur	4,500	7-Jun-13	Fri	964
4-May-13	Sat	4,306	8-Jun-13	Sat	922
5-May-13	Sun	4,121	9-Jun-13	Sun	883
6-May-13	Mon	3,943	10-Jun-13	Mon	845
7-May-13	Tue	3,773	11-Jun-13	Tue	808
8-May-13	Wed	3,611	12-Jun-13	Wed	774
9-May-13	Thur	3,455	13-Jun-13	Thur	740
10-May-13	Fri	3,307	14-Jun-13	Fri	700
11-May-13	Sat	3,164	15-Jun-13	Sat	700
12-May-13	Sun	3,028	18-Jun-13	Tue	600
13-May-13	Mon	2,897	19-Jun-13	Wed	568
14-May-13	Tue	2,773	20-Jun-13	Thur	544
15-May-13	Wed	2,653	21-Jun-13	Fri	521
16-May-13	Thur	2,539	22-Jun-13	Sat	498
17-May-13	Fri	2,430	23-Jun-13	Sun	477
18-May-13	Sat	2,325	24-Jun-13	Mon	450
19-May-13	Sun	2,225			
20-May-13	Mon	2,129			
21-May-13	Tue	2,000			
25-May-13	Sat	1,708			
26-May-13	Sun	1,635			
27-May-13	Mon	1,564			
28-May-13	Tue	1,497			
29-May-13	Wed	1,443			
30-May-13	Thur	1,371			

EXHIBIT 3

BUREAU OF RECLAMATION
Central Valley Operation Office
3310 El Camino Avenue, Suite 300
Sacramento, California 95821

DEPARTMENT OF WATER RESOURCES
Division of Operations and Maintenance
3310 El Camino Avenue, Suite 300
Sacramento, California 95821

MAY 24 2013

IN REPLY REFER TO:
CVO-100
WTR-4.10

Thomas Howard
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

Subject: State Water Resources Control Board Water Right Decision 1641 Water Year Classification

Dear Mr. Howard:

The Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) request that the State Water Resources Control Board (SWRCB) acknowledge that the water year classification for the Sacramento Valley based on the equation provided in Attachment 1, page 188 of Revised Water Rights Decision 1641 (D-1641) does not accurately reflect the unprecedented dry conditions experienced in 2013. Instead, the hydrologic conditions experienced between January and the present are characteristic of a "Critical" water year type. The current miscategorization in water year classification is projected to affect the storage of cold water pool for fisheries purposes due to controlling D-1641 Delta objectives in the May through August period. These objectives are:

1) EC parameters for Sacramento River at Emmaton (Interagency Station Number D-22), San Joaquin River at Jersey Point (Interagency Station Number D-15), South Fork Mokelumne River at Terminous (Interagency Station Number C-13), and San Joaquin River at San Andreas (interagency Station Number C-4) as defined in Table 2 on page 182
2) Delta Outflow, as defined on Table 3 on Page 184.

Water year classification also affects other objectives listed in D-1641 to a lesser degree, but it is not anticipated that those objectives will significantly control Delta operations in 2013.

Summary of Relevant Facts:
D-1641 imposes water quality objectives on the Central Valley Project (CVP) and State Water Project (SWP). Several of the objectives are dependent on the water year type as determined by the May 1, Sacramento Valley Index and the San Joaquin Valley Index. Although the January through April period during 2013 was the driest on record, the November and December precipitation was sufficient to result in a Sacramento Valley classification of "Dry" for water year 2013. The "Dry" water year classification is not representative of the extreme hydrological conditions in Northern California this calendar year and the water quality objectives based on this water year type could result in significant adverse impacts to the cold water pool operations at Shasta Reservoir. In fact, Governor Brown's recent executive order B-21-13 recognizes that, "much of California experienced record dry conditions in January through March 2013, registering historic lows on the Northern Sierra" and "record dry and warm conditions resulted in a snowpack substantially below average, with estimated May water content in the statewide snowpack being only 17 percent of average."

The 2013 water year has been particularly challenging with double the normal precipitation in November and December and historically low values from January into May. The current Northern Sierra 8 Station Precipitation Index from January 1, 2013 through May 15 is about 8.8 inches. Without additional measurable precipitation in May, this figure will represent the driest Northern Sierra 8-Station Precipitation Index for the January through May period on record. Attachment 1 shows the accumulated 8-station precipitation values from January through May for some of the extremely dry years including 1924, 1976, and 1977. The nearly 80 percent of this year's precipitation occurred in the first three months of the water year, and an abnormally large portion of this fell as rain rather than snow as a result of warmer than normal conditions for that time of year. This combined with critically dry conditions in the months since the first of the year has resulted in minimal snow pack in the Sierra Nevada in the critical spring months. The Northern Sierra snowpack was only about 48% of the historical April 1 value and about 17% of normal as of May 1, 2013. Creek and small stream flows that enter the Sacramento River system below major reservoirs are running at historically low levels in response to the extended dry period. DWR's May 1, 2013 Bulletin 120 forecasts an April to July runoff 48% of normal for the Sacramento Valley. Hydrological conditions are not likely to improve and the National Oceanic and Atmospheric Administration has indicated that California is in severe to extreme drought that is likely to persist or intensify into the summer (Attachment 2).

Additionally, unusually high depletions in the Sacramento Valley are adding to the operational challenges the CVP and SWP (collectively, Projects) are facing in meeting the 2013 water year type requirements. Typically, extremely dry years with low Northern Sierra 8-Station Precipitation Index values trigger the Shasta inflow shortage criteria included in water rights settlement contracts that would reduce water supplies for the senior water rights diverters in the Sacramento Valley. Yet, this year the wetter conditions in the fall months were sufficient to require full allocations to the Sacramento Valley and Feather River settlement contractors,

increasing demands on Shasta and Oroville storage. Therefore, it is expected that depletions will continue to run at a high rate into the summer. DWR and Reclamation are required to make releases in order to satisfy the senior water rights of the Sacramento River and Feather River settlement contractors, and the Exchange Contractors. These contracts specify the amount of water the Projects must deliver – for the Sacramento River and Exchange Contractors, Reclamation is required to deliver 100% of the contract total in any year where the forecasted inflow to Shasta Reservoir exceeds 3.2 million acre feet (af). This target was met in 2013 – thus Reclamation is mandated to deliver 100% of the contract total, and has no discretion under the contract to reduce these deliveries.

The unusually high stream depletions (Attachment 3) were a major cause of the exceedence of the Emmaton objective that occurred in April and May. This is described in further detail in DWR and Reclamation's letter to SWRCB dated May 24, 2013. The CVP and SWP reservoir systems were in a near normal condition in January, but Reclamation and DWR have drawn heavily on the storage since then due to the extended dry period, low unregulated flow entering the system, and high depletions in the Central Valley. Reservoir releases are currently well above average for this date.

In order to meet the Dry year water quality objectives rather than the Critical objectives, DWR and Reclamation have released significant volumes of water from Oroville, Shasta, and Folsom Reservoirs. The low reservoir inflow and increased storage withdrawal is depleting the cold water pool in the reservoirs that is important to provide adequate instream fishery habitat for anadromous fish in the rivers through the summer and fall.

SWRCB Water Rights Order 90-05 requires that Reclamation operate Shasta Reservoir to meet a daily average temperature of 56 degrees Fahrenheit in the Sacramento River at a location and through periods when higher temperatures will be detrimental to the fishery. Typically, through coordination with the Sacramento River Temperature Task Group (SRTTG), the location selected is between Balls Ferry and Bend Bridge on the Sacramento River. Without recognition of the Sacramento Valley water year type actually experienced in 2013, the projected low reservoir storage and limited cold water pool this year may result in the objective occurring well upstream of Balls Ferry and Reclamation is concerned whether the 56 degree objective can be maintained at any location in the Sacramento River through the fall. The cold water pool is vital to providing adequate habitat to salmon present in the Sacramento River through the summer and into the fall for both the winter-run Chinook salmon and fall-run Chinook salmon. The SRTTG has recommended an initial temperature compliance point of Airport Road located upstream of Balls Ferry due to the limited cold water resources this year.

Due to the unprecedented hydrologic conditions discussed above including the record dry January through May period, extremely low snowpack, and unusually high Sacramento valley depletions, conditions continue to deteriorate and it is clear that meeting the dry year objectives could jeopardize the ability to meet other fisheries objectives later in the year. The reservoir storage that accumulated in the wet fall, which was originally projected to be sufficient to meet the dry year objectives, is falling rapidly due to the abnormally large valley demands and

Reclamation is projecting CVP September carryover storages only about 63% of average.

There is a significant difference between the volume of Delta inflow needed to achieve the Dry and Critical water quality objectives for Jersey Point and Emmation through June 15. If Reclamation and DWR are able to begin operating to the Critical year water quality objectives in May it may be possible to achieve 100,000 to 200,000 af, of cold water benefits in the upstream reservoirs. This savings in cold water storage would improve the chances of meeting the temperature objective at Airport Road. This cold water benefit will help avoid temperature related fish losses in the Sacramento River.

The greatest benefits to the Project's reservoir storage would occur in the May to August 15 period. The compliance locations in the Western Delta and Interior Delta shown in Table 3 on Page 182 (Sacramento River at Emmaton (Interagency Station Number D-22), San Joaquin River at Jersey Point (Interagency Station Number D-15), South Fork Mokelumne River at Terminous (Interagency Station Number C-13), and San Joaquin River at San Andreas Landing (Interagency Station Number C-4) would most likely be the objectives controlling the Project operations during the May to June 15 period and changes at these locations would have the greatest impact on improving upstream storage in the immediate future. The objectives of the Delta outflow compliance location in Table 3 on page 184 often can control Project operations through the summer and operating to a critical year with respect to Delta outflow will also assist in preserving cold water pool.

Currently, DWR and Reclamation are maintaining a Net Delta Outflow well over 9,000 cubic feet per second (cfs) in order to achieve the Dry year objectives for Jersey Point and Emmaton. If the Dry classification is changed to Critical, the controlling D-1641 objective through June would be the Net Delta Outflow Index of at least 7,100 cfs in Table 3, or the export to inflow ratio of 35% in Table 3. From July through August 15, the controlling criteria for either water year classification would most likely shift among the minimum Net Delta Outflow objectives in Table 3, the salinity objectives for Jersey Point and Emmaton in Table 2, the Export to Inflow ratio of 65% in Table 3, or the Contra Costa 250 chloride objective in Table 1.

Table 2 of D-1641 requires an electrical conductivity (EC) no greater than 0.45 mmhos/cm for both Emmaton and Jersey point locations from April 1 to June 15, and 1.67 mmhos/cm for Emmaton and 1.35 mmhos/cm for Jersey Point from June 15 to August 15 under a Dry Year classification. For a Critical year these objectives are 2.78 mmhos/cm from April 1 to August 15 for Jersey Point and Emmaton. Since the X2 outflow objective of 7,100 cfs, which is not linked to the year type designation would probably control in May, and June, there would only be a gradual increase in salinity at Jersey Point and Emmaton through June that is reflective of a Critical year. Water quality at Jersey Point and Emmaton would fluctuate with the tidal and meteorological conditions potentially moving towards a 1.0 to 2.0 mmhos/cm EC range in July. Compliance with the water quality objectives at the Jersey Point and Emmaton locations typically achieves the objectives at Terminous and San Andreas Landing. This gradual increase in salinity levels would be commensurate with those experienced in years with similar hydrologic conditions as those observed in recent months.

Reclamation estimates that from May through August 15 a change in the water year classification from Dry to Critical in the Western Delta and Interior Delta locations in Table 2 could result in a gain of about 115,000 af, in upstream reservoir carryover storage at the end of September. Including the Delta outflow compliance in Table 3 for the same period would increase the gain in reservoir carryover storage to about 185,000 af. There could be reductions in the release from Keswick Reservoir up to about 1,000 cubic feet second in late May and June under a Critical year classification.

D-1641 requires that the number of days less than or equal to 150 mg/l chloride at Contra Costa Pumping Plant be greater than 165 days for a Dry year and 155 days for a Critical year. DWR and Reclamation do not anticipate that this objective would be a controlling criteria for the Projects under either year classification and both objectives would be met. The minimum Net Delta Outflow required from February through June (Collinsville X2 at 7,100 cfs) should be adequate to achieve the Contra Costa objective under either the Dry or Critical classification.

SWRCB recognition of the change in water year type is in the public interest. The change will provide for a water year classification reflective of the extremely dry hydrologic conditions in 2013 and allow the projects to operate in a manner that will provide the maximum benefit to critical beneficial users without unreasonably affecting other designated beneficial uses. As noted above there will be no significant impacts to agricultural or municipal uses, and the change will provide significant benefit to fisheries resources. State and federal agencies have been focused on the protection and improvement of fishery conditions in the Delta watershed, and are in the process of analyzing options for balancing project operations for the numerous different beneficial uses. Approval of the following request would result in water quality conditions in the North Delta that are consistent with the hydrology we are currently experiencing, while preserving cold water storage critical to salmon survival.

Requested Action:
Reclamation and DWR request that the SWRCB recognize the change in year classification need and act immediately. Delaying such recognition to even June 1 will significantly impair Reclamation's ability to meet cold water temperature objectives on the Sacramento River. At present, the controlling D-1641 Delta water quality objectives for the Projects that are linked to the Sacramento Valley Index are Jersey Point in Table 2, Emmaton in Table 2. In addition, Delta Outflow in Table 3, may become a controlling standard and will also impact cold water pool storage starting in the middle of June.

We believe the SWRCB may balance protection of the beneficial uses in light of the critical water year type experienced on the Sacramento River in 2013. Immediate benefits to cold water pool storage can be achieved through the Projects meeting critical water year standards for the Interior and Western Delta salinity standards in Table 2. The compliance points at issue are Sacramento River at Emmaton (Interagency Station Number D-22), San Joaquin River at Jersey

Point (Interagency Station Number D-15), South Fork Mokelumne River at Terminous (Interagency Station Number C-13), and San Joaquin River at San Andreas Landing (Interagency Station Number C-4).

Additional cold water pool benefits can be achieved in July through September with recognition of the critical water year type in Table 3, Water Quality Objectives for Fish and Wildlife Beneficial Uses. As noted above; Delta outflow objectives will likely control project operations in July through September, where agricultural objectives are met under a critical water year designation. A Delta outflow standard reflective of the critical water year type may produce an additional 70,000 af of cold water pool storage.

If you have any questions or would like more information regarding this notification, please contact Mr. Paul Fujitani of Reclamation at 916-979-2197 or Mr. John Leahigh at 916-574-2722.

Sincerely,

Ronald Milligan, Operations Manager
Central Valley Operations Office
U.S. Bureau of Reclamation

for D. Roose

David H. Roose, Chief
SWP Operations Control Office
Department of Water Resources

Attachment -4

cc: Mr. Craig M. Wilson, Delta Watermaster
State Water Resources Control Board
1001 I Street
Sacramento, California 95812

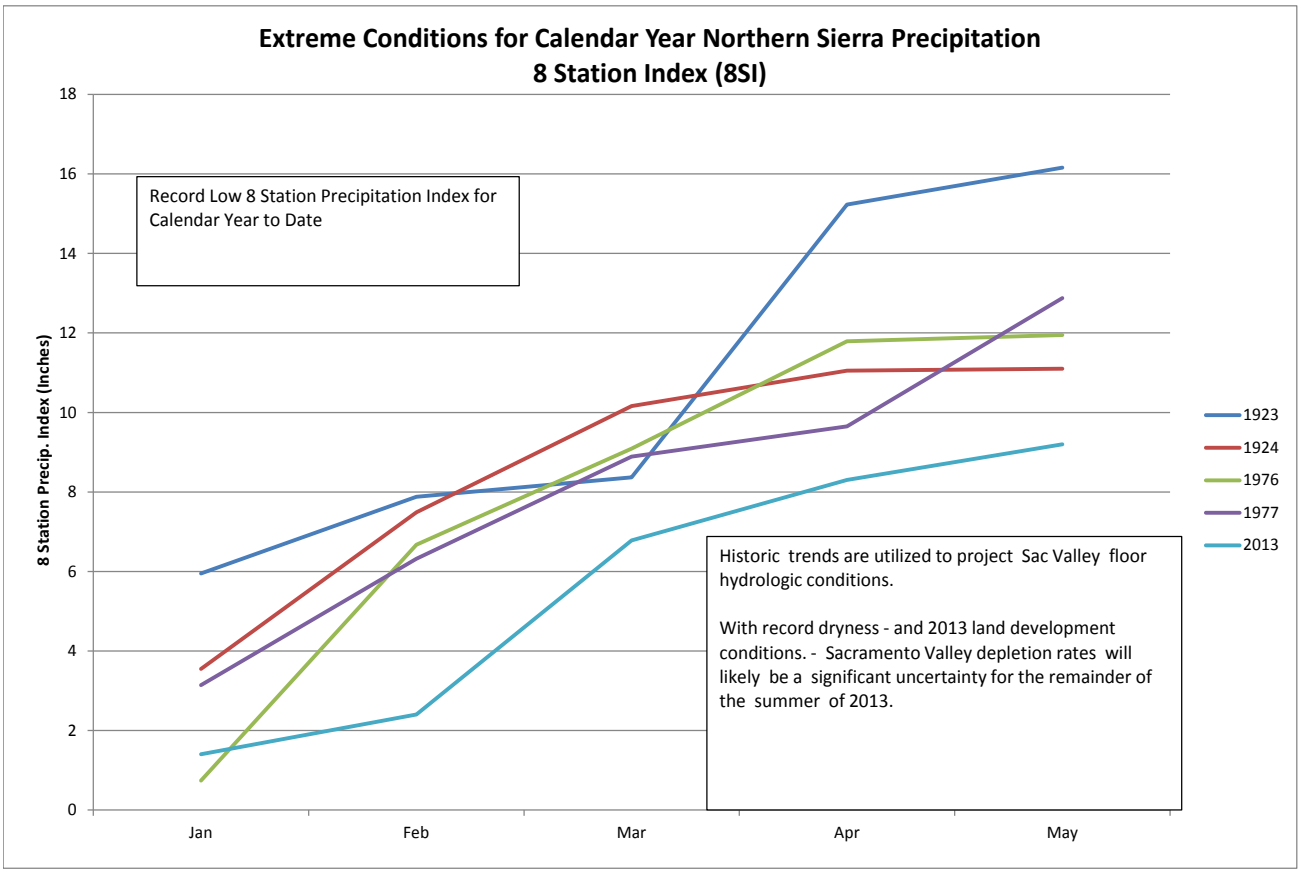
Ms. Maria Rae
Central Valley Office Supervisor
National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, California 95814

Mr. Les Grober
State Water Resources Control Board
Division of Water Rights
1001 I Street
Sacramento, California 95812
(w/encl to each)

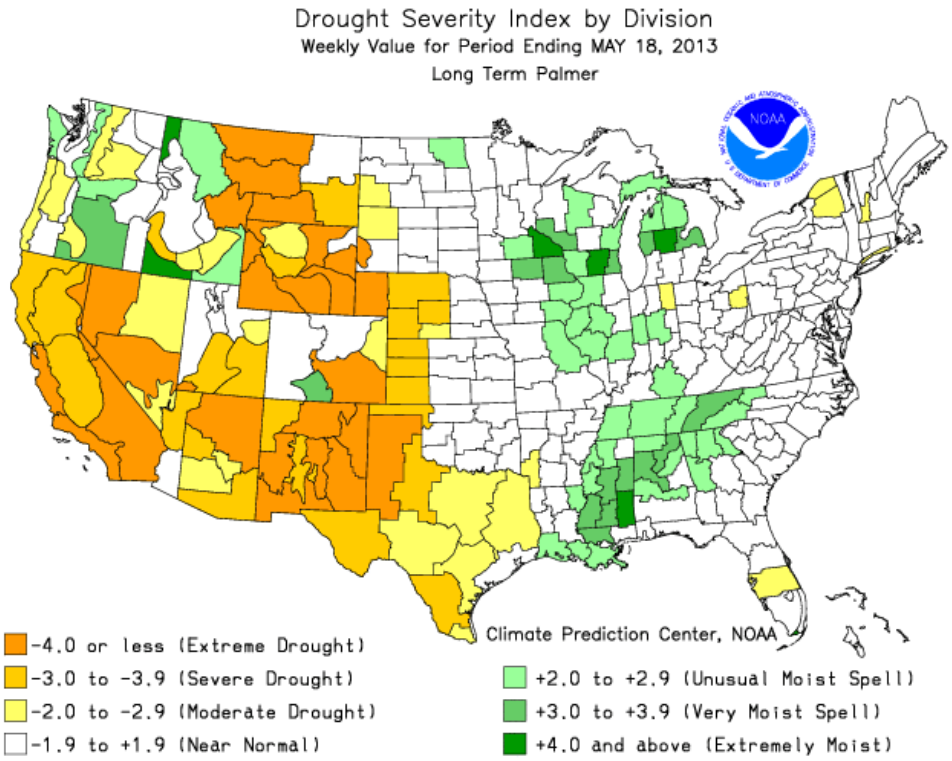
Carl Wilcox
California Department of Fish and Wildlife
1416 9th Street
Sacramento, California 95814

Ms. Kim Turner
Assistant Field Supervisor
Bay-Delta Fish & Wildlife Office
U.S. Fish & Wildlife Service
650 Capitol Mall, Suite 8-300
Sacramento, California 95814

Attachment 1



Attachment 2



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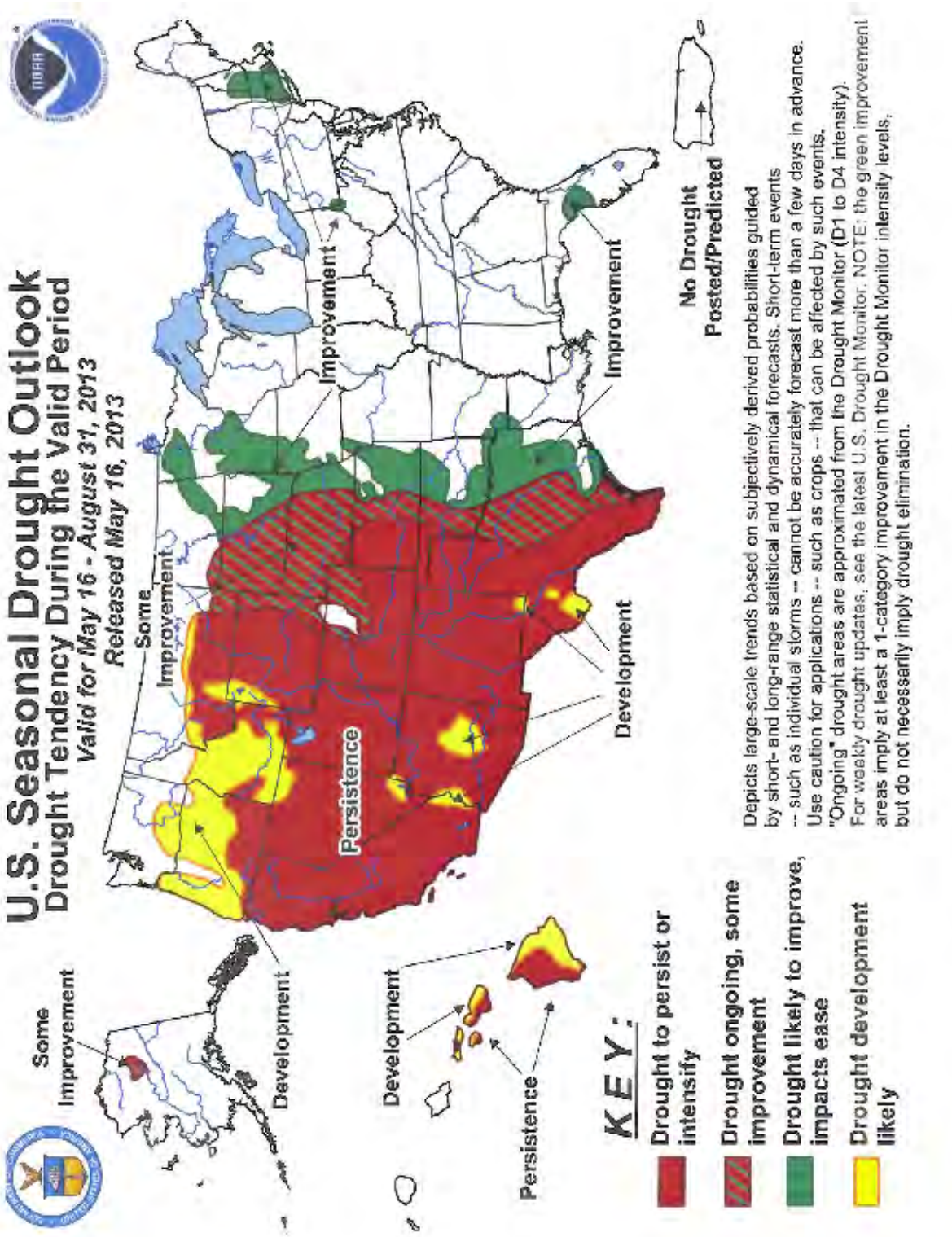

Attachment 4

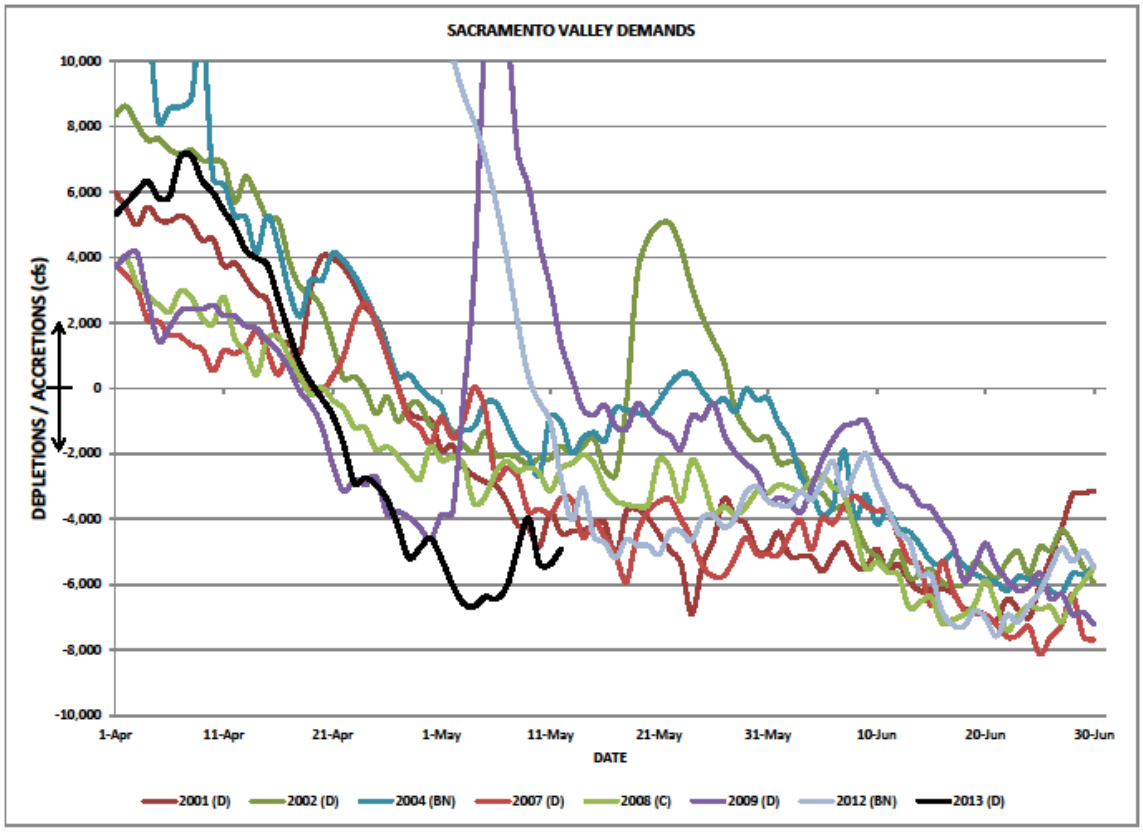

EXHIBIT 4

United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

IN REPLY REFER TO:
MP-100
WTR-4.10

JUL 27 2012

Mr. Daniel Nelson
Executive Director
San Luis & Delta-Mendota Water Authority
P.O. Box 2157
Los Banos, CA 93635

Subject: Proposed Trinity River Division Releases for Lower Klamath Chinook Salmon

Dear Mr. Nelson:

We are in receipt of your July 3, 2012, letter regarding the Proposed Trinity River Division releases for Lower Klamath Chinook Salmon. We understand your points of concern on the proposed operation. We also recognize that if you choose not to protest or otherwise dispute this proposed action, your choice does not represent a waiver of your position that the Bureau of Reclamation lacks statutory authority to carry out the proposed action.

On July 13, 2012, Reclamation filed a Petition for Temporary Urgency Change (Petition) with the California State Water Resources Control Board (enclosed). The Petition reiterates information contained in Reclamation's Draft Environmental Assessment (EA) on the action released on July 17, 2012, particularly with respect to mitigation of any potential future effects of the proposed action. As stated in the Petition and Draft EA, Reclamation will assess the effects of the proposed action on water supply and power generation, and will identify and implement mitigation measures to ensure that this action does not have a water supply impact to Central Valley Project water contractors in the 2013-14 contract year, subject to the provisions of Federal and State law, including the Anti-Deficiency Act. Further, Reclamation will be developing a long-term strategy for addressing future fall fish needs on the Lower Klamath River. We look forward to continuing the discussion over the next few months regarding your concerns on this year's and future Reclamation actions.

Sincerely,

Donald R. Glaser
Regional Director

Enclosure

Continued on next page.

cc: Mr. Michael Connor
Commissioner
Bureau of Reclamation
1849 C Street, NW
Washington, DC 20240

Mr. Thomas Birmingham
General Manager
Westlands Water District
3130 N. Fresno Street
Fresno, CA 93703